

prescriptions for Methadone and Oxycodone on September 15, 2008 by Respondent Quan Haduong, M.D., that were filled at Walgreens Pharmacy #6545. Mrs. Fodell claimed that her husband had the exact same prescriptions that were filled at Walgreens Pharmacy #6545 on September 15, 2008, also filled at Evergreens Drug on November 6, 2008. Mrs. Fodell concluded that her husband, Gregory, died on November 11, 2008 as a result of opiate intoxication.

III.

On August 24, 2009, the Board was provided by the staff of Respondent Evergreens Drug copies of the front of the two prescriptions that were filled on November 6, 2008 as well as the patient profile of Gregory Fodell from its computer system. These documents were provided by the staff of Respondent Evergreens Drug at Respondent Tran's direction. These prescriptions were faxed and the fax showed a time and date stamp of August 24, 2009. The prescriptions that were faxed to the Board on August 24, 2009 were issued by Respondent Haduong and showed an issue date of November 6, 2008.

IV.

On September 2, 2009, Board staff contacted Walgreens Pharmacy #6545 and requested patient records for Gregory Fodell. Walgreens #6545 provided Gregory Fodell's patient profile as well as copies of the Methadone and Oxycodone prescriptions that were filled on September 15, 2008.

V.

On September 4, 2009, Respondent Tran, who is the owner of and pharmacy manager for Respondent Evergreens Drug, stated that on November 6, 2008 he had received a telephone call from Jennifer Palmer, a medical assistant from Respondent

Haduong's office, advising him that she had a patient (Gregory Fodell) for whom Respondent Haduong had approved a one week emergency fill for Methadone and Oxycodone, but because Respondent Haduong was performing a procedure, he was unable to write the prescriptions at that time. Respondent Tran stated that Ms. Palmer told him that Gregory Fodell had an appointment to be seen by Respondent Haduong the following week but was not able to come to the office at this time. Ms. Palmer faxed Respondent Tran a copy of the prescriptions that had been written by Respondent Haduong on September 15, 2008. Respondent Tran said that he told Ms. Palmer that the original prescriptions would need to be mailed within 72 hours. Respondent Tran stated that on November 6, 2008 he filled the prescriptions for the Methadone and Oxycodone off of the faxed copies of the September 15, 2008 prescriptions and then dispensed the medication to Gregory Fodell. Both Methadone and Oxycodone are CII controlled substances.

VI.

On September 8, 2009, in her oral interview, Eleanor Fodell stated that her husband had suffered a back injury and was referred to pain management physician Respondent Haduong. Eleanor Fodell stated that on September 15, 2008, her husband Gregory Fodell was seen by Respondent Haduong and was issued a prescription for Methadone 10 mg. #140 and for Oxycodone 30 mg. immediate release #28. Mrs. Fodell stated that these prescriptions were filled at Walgreens that same day. Mrs. Fodell stated that her husband died on November 11, 2008 and it was determined by the Clark County Coroner's Office that he died as a result of coronary atherosclerosis and a significant contributing condition was opiate intoxication. Mrs. Fodell explained that when she was going through her husband's things after his death,

she found two prescription bottles that were filled by Evergreens Drug on November 6, 2008. One bottle was for Methadone 10 mg. # 140 and the other was for Oxycodone 30 mg. immediate release #28. Mrs. Fodell counted the pills and found that 29 of the Methadone were missing and eight and-a-half of the Oxycodone tablets were missing. Mrs. Fodell was unaware that her husband had the prescriptions filled at Evergreens Drug. Mrs. Fodell believed that Mr. Fodell had consumed the medication he received from Evergreens Drug and he was hiding them from her. Mrs. Fodell went to Walgreens and was given her husband's prescription records without problem. But when she tried to obtain her husband's information from Respondent Evergreens Drug, she was initially refused. When Mrs. Fodell returned one week later, she was given a copy of the prescriptions on file and his patient profile. Mrs. Fodell reviewed the Walgreen's prescriptions and the Evergreens Drug prescriptions and found that they were exactly the same. Additionally, Mrs. Fodell reviewed a copy of the Nevada Controlled Substances Task Force patient profile for her husband and found that the prescriptions that had been filled by Respondent Evergreens Drugs were not listed on the report.

VII.

On October 1, 2009, Respondent Tran was interviewed and admitted that he had provided Mrs. Fodell a copy of the prescriptions on April 7, 2009 that had been faxed to him by Respondent Haduong's office on November 6, 2008. When questioned about why the prescriptions that had been faxed to the Board of Pharmacy on August 24, 2009 were dated November 6, 2008, Respondent Tran admitted that he could not find the original prescriptions and as a result of this investigation contacted Respondent Haduong's office to have the original prescriptions re-written and that is what was

provided to the Board for its investigation. Respondent Tran did not have an explanation as to why he did not contact Respondent Haduong for the prescriptions when Mrs. Fodell first contacted him. Respondent Tran admitted that he was aware that only a physician may call in an emergency prescription fill. When asked why Respondent Tran would fill a prescription for two CII prescriptions based on a fax that was written three months earlier and then not follow-up with a hard copy prescription, Respondent Tran stated that he filled the prescriptions in good faith but now realizes that his actions did not comply with Nevada law.

VIII.

On November 9, 2009, Respondent Haduong stated in his oral interview that he had seen Gregory Fodell one time, on September 15, 2008, and after examining him had issued him a prescription for Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28. Both prescriptions were for a seven-day supply. Respondent Haduong stated that Gregory Fodell was to follow up in one week but failed to make his appointment. Respondent Haduong maintains that he only had contact with Gregory Fodell that one time and that his medical assistant Jennifer Palmer, who left his practice in January 2009, was the one who made contact with Respondent Tran at Evergreens Drug and faxed the copy of the September 15, 2008 prescriptions to Evergreens Drug to be filled for Gregory Fodell. Respondent Haduong stated and maintained that he did not authorize the prescriptions for Gregory Fodell that were filled by Respondent Tran at Evergreens Drug. He did admit that he has on occasion authorized his staff to call in prescriptions for patients, but again stated he did not believe he authorized the prescriptions for Gregory Fodell on November 6, 2008. Respondent Haduong stated that his office had been contacted by Respondent Tran in August of 2009 to have the

prescriptions re-written for November 6, 2008. Respondent Haduong admitted that he rewrote the prescriptions without looking at Gregory Fodell's chart, believing that Respondent Tran must have lost or misplaced the prescriptions. When asked why Respondent Haduong had rewritten prescriptions ten months later for prescriptions he claimed he never issued in the first place, Respondent Haduong stated he did it in good faith.

IX.

On November 24, 2009, Respondent Haduong submitted a written response to the Board in which he stated in part:

"The investigation I undertook after you contacted me, has lead me to conclude that on November 6, 2008, my office staff contacted Walgreens and approved the transfer of the September 15, 2008 prescription Mr. Fodell had filled at the pharmacy to Evergreen Pharmacy; that my staff authorized the pharmacist at Evergreen Pharmacy to refill the prescriptions and told him that a hard copy would follow. In addition, my office staff made a follow-up appointment for Mr. Fodell for November 11, 2008. I later learned that the patient died on the date he was to have come and see me."

FIRST CAUSE OF ACTION

X.

For dispensing an oral order for the CII controlled substances namely, Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without an emergency circumstance that would have justified the filling of an orally issued CII prescription, Respondents Tran and Evergreens Drug have violated NRS 453.256(2)(a) and/or NRS 639.210(4) and/or NAC 453.010(2) and/or NAC 453.420 and/or 453.450(1)(b) and/or NAC 639.945(1)(i).

SECOND CAUSE OF ACTION

XI.

For dispensing an order for the CII controlled substances namely, Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without a legally sufficient written prescription of a practitioner, Respondents Tran and Evergreens Drug have violated NRS 453.256(1) and/or NRS 453.377(1) and/or NRS 639.210(4) and/or NAC 453.450(1)(a) and/or NAC 639.945(1)(i).

THIRD CAUSE OF ACTION

XII.

For dispensing faxed prescriptions for the CII controlled substances, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, that were not compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion, issued to a resident of a facility for long-term care, or issued to a patient enrolled in a licensed program that provides hospice care, Respondents Tran and Evergreens Drug have violated NRS 453.256(2)(b) and/or NRS 639.210(4) and/or NAC 639.711(1)(a), (b) and (c) and/or NAC 639.945(1)(i).

FOURTH CAUSE OF ACTION

XIII.

For dispensing CII controlled substances, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, more than 14 days after the date of issue of the prescriptions filled, Respondents Tran and Evergreens Drug have violated NRS 453.431(4) and/or NRS 639.210(4) and/or NAC 639.945(1)(i).

FIFTH CAUSE OF ACTION

XIV.

For soliciting and obtaining the CII controlled substance prescriptions from Dr. Haduong, namely the Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28 prescriptions with the issue date of November 6, 2008, under circumstances in which the prescriptions were false, deceitful, or fraudulent, Respondents Tran and Evergreens Drug have violated NRS 453.331(1)(d) and/or NRS 639.210(4),(9),(15) and/or (17) and/or NAC 639.945(1)(h) and/or (i).

SIXTH CAUSE OF ACTION

XV.

For participating in a course of action that assisted in the fraudulent and deceitful dispensing of controlled substances, or under circumstances that Respondents Tran and Evergreens Drug should have reasonably known that the dispensing of the controlled substances was unlawful, questionable, or illegal, Respondents Tran and Evergreens Drug violated NRS 639.210(4) and/or (12) and/or NAC 945(1)(h), and/or (i). Pursuant to NAC 639.955(7), both orders that were dispensed to Gregory Fodell by Respondents Tran and Evergreens Drug are grouped in this Cause of Action for the Board's administrative convenience, but the Board may impose separate discipline for both the drug orders.

SEVENTH CAUSE OF ACTION

XVI.

For violating the corresponding duty stated in 21 CFR §1306.04(a) by dispensing controlled substance prescriptions for Mr. Fodell that were not issued by a practitioner, namely Respondent Haduong, acting in the usual course of his professional practice,

Respondents Tran and Evergreens Drug, violated NRS 639.210(11) and/or NAC 639.945(1)(i).

EIGHTH CAUSE OF ACTION

XVII.

In owning and operating the pharmacy in which the above acts and violations occurred, Respondent Evergreens Drug, violated NRS 639.210(4) and/or NAC 639.945(1)(i) and/or (2).

NINTH CAUSE OF ACTION

XVIII.

For his office's issuance of the oral order for the CII controlled substances for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, placed by his staff to Respondents Tran and Evergreens Drug on November 6, 2008, which oral prescriptions were for CII controlled substances under non-emergency circumstances, Respondent Haduong has violated NRS 639.2355 and/or NRS 453.256(2)(a) and/or NRS 639.210(4) and/or NAC 453.010(2) and/or NAC 453.450(1)(b) and/or NAC 639.945(1)(i).

TENTH CAUSE OF ACTION

XIX.

For issuing oral orders on November 6, 2008 for the CII controlled substances for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without an emergency that would justify the oral prescriptions, Respondent Haduong has violated NRS 453.256(2)(a) and/or NRS 639.210(4) and/or NAC 453.010(2) and/or NAC 639.945(1)(i).

ELEVENTH CAUSE OF ACTION

XX.

For issuing the false or fraudulent CII controlled substance prescriptions with a purported issuance date of November 6, 2008 for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, but which were actually written in August 2009, ten months after the date of the purported issuance date, Respondent Haduong has violated NRS 453.331(1)(i) and/or NRS 639.210(4) and/or (9) and/or NAC 639.945(1)(h) and/or (i).

TWELFTH CAUSE OF ACTION

XXI.

For violating the his duty stated in 21 CFR §1306.04(a) to assure that his CII controlled substances prescriptions for Mr. Fodell were issued in the regular course of his practice and for a legitimate medical purpose under circumstances which were not in the usual course of his practice and could not be known by him to be for a legitimate medical purpose by issuing prescriptions for CII controlled substances for Mr. Fodell on November 6, 2008, Respondent Haduong, violated 21 CFR § 1306.04(a) and/or NRS 639.210(4) and/or (11) and/or NAC 639.945(1)(i).

THIRTEENTH CAUSE OF ACTION

XXII.

For prescribing an order for the CII controlled substances for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without a legally sufficient written prescription, Respondent Haduong has violated NRS 453.256(1) and/or NRS 639.210(4) and/or NAC 639.945(1)(i).

FOURTEENTH CAUSE OF ACTION

XXIII.

For authorizing a refill for the CII controlled substance prescriptions for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, Respondent Haduong has violated 21 CFR §1306.12(a) and/or NRS 453.256(2)(b) and/or NRS 639.210(4) and/or (11) and/or NAC 639.945(1)(i).

FIFTEENTH CAUSE OF ACTION

XXIV.

For participating in a course of action that assisted in the fraudulent and deceitful dispensing of controlled substances to Mr. Fodell, or under circumstances that Respondent Haduong should have reasonably known that the dispensing controlled substances was unlawful, questionable, or illegal, Respondent Haduong violated NRS 639.210(4) and/or (12) and/or NAC 945(1)(h), and/or (i). Pursuant to NAC 639.955(7), both orders that were dispensed to Gregory Fodell by Respondents Tran and Evergreens Drug are grouped in this cause of action for the Board's administrative convenience, but the Board may impose separate discipline for both of the drug orders.

WHEREFORE it is requested that the Nevada State Board of Pharmacy take appropriate disciplinary action with respect to the certificates of registration of the Respondents.

Signed this 11th day of December, 2009.


Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements regarding your certificate of registration. To do so, you must mail to the Board within 15 days of your receipt of this Notice of Intended Action and Accusation a written statement showing your compliance.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

v.

**Petitioner, STATEMENT TO THE RESPONDENT
NOTICE OF INTENDED ACTION
AND ACCUSATION
RIGHT TO HEARING**

**SEAN H. TRAN, RPH
Certificate of Registration No. 14352**

Case No. 09-029-RPH-S

Respondent.

_____/

TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

I.

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B, a Notice of Intended Action and Accusation has been filed with the board by the Petitioner, Larry L. Pinson, Executive Secretary for the board, alleging grounds for imposition of disciplinary action by the board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

II.

You have the right to a hearing before the Nevada State Board of Pharmacy to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. It is required that you complete two copies of the Answer and Notice of Defense documents served herewith and file said copies with the Nevada State Board of Pharmacy within fifteen (15) days of receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within.

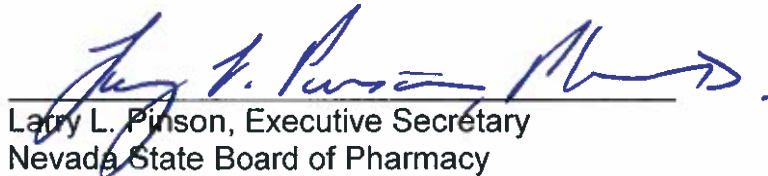
III.

The Board has reserved Wednesday, January 13, 2010 as the date for a hearing on this matter at the Las Vegas Chamber of Commerce, 6671 Las Vegas Boulevard South, Las Vegas, Nevada. The hour of the hearing will be set by letter to follow.

IV.

Failure to complete and file your Notice of Defense with the Board and thereby request a hearing within the time allowed shall constitute a waiver of your right to a hearing in this matter and give cause for the entering of your default to the Notice of Intended Action and Accusation filed herein, unless the board, in its sole discretion, elects to grant or hold a hearing nonetheless.

DATED this 11th day of December, 2009.


Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

**ANSWER AND NOTICE
OF DEFENSE**

**SEAN H. TRAN, RPH
Certificate of Registration No. 14352**

Case No. 09-029-RPH-S

Respondent.

_____/

Respondent above named, in answer to the Notice of Intended Action and Accusation filed in the above-entitled matter before the Nevada State Board of Pharmacy, declares:

1. That his objection to the Notice of Intended Action and Accusation as being incomplete or failing to state clearly the charges against him, is hereby interposed on the following grounds: (State specific objections or insert "none").

DEC 21 2009

2. That, in answer to the Notice of Intended Action and Accusation, he admits, denies and alleges as follows:

I would like to explain my action at the board hearing on Jan. 13, 2010. Thank you

I hereby declare, under penalty of perjury, that the foregoing Answer and Notice of Defense, and all facts therein stated, are true and correct to the best of my knowledge.

DATED this 18 day of December, 2009.



Sean H. Tran

prescriptions for Methadone and Oxycodone on September 15, 2008 by Respondent Quan Haduong, M.D., that were filled at Walgreens Pharmacy #6545. Mrs. Fodell claimed that her husband had the exact same prescriptions that were filled at Walgreens Pharmacy #6545 on September 15, 2008, also filled at Evergreens Drug on November 6, 2008. Mrs. Fodell concluded that her husband, Gregory, died on November 11, 2008 as a result of opiate intoxication.

III.

On August 24, 2009, the Board was provided by the staff of Respondent Evergreens Drug copies of the front of the two prescriptions that were filled on November 6, 2008 as well as the patient profile of Gregory Fodell from its computer system. These documents were provided by the staff of Respondent Evergreens Drug at Respondent Tran's direction. These prescriptions were faxed and the fax showed a time and date stamp of August 24, 2009. The prescriptions that were faxed to the Board on August 24, 2009 were issued by Respondent Haduong and showed an issue date of November 6, 2008.

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Haduong's office, advising him that she had a patient (Gregory Fodell) for whom Respondent Haduong had approved a one week emergency fill for Methadone and Oxycodone, but because Respondent Haduong was performing a procedure, he was unable to write the prescriptions at that time. Respondent Tran stated that Ms. Palmer told him that Gregory Fodell had an appointment to be seen by Respondent Haduong the following week but was not able to come to the office at this time. Ms. Palmer faxed Respondent Tran a copy of the prescriptions that had been written by Respondent Haduong on September 15, 2008. Respondent Tran said that he told Ms. Palmer that the original prescriptions would need to be mailed within 72 hours. Respondent Tran stated that on November 6, 2008 he filled the prescriptions for the Methadone and Oxycodone off of the faxed copies of the September 15, 2008 prescriptions and then dispensed the medication to Gregory Fodell. Both Methadone and Oxycodone are CII controlled substances.

VI.

On September 8, 2009, in her oral interview, Eleanor Fodell stated that her husband had suffered a back injury and was referred to pain management physician Respondent Haduong. Eleanor Fodell stated that on September 15, 2008, her husband Gregory Fodell was seen by Respondent Haduong and was issued a prescription for Methadone 10 mg. #140 and for Oxycodone 30 mg. immediate release #28. Mrs. Fodell stated that these prescriptions were filled at Walgreens that same day. Mrs. Fodell stated that her husband died on November 11, 2008 and it was determined by the Clark County Coroner's Office that he died as a result of coronary atherosclerosis and a significant contributing condition was opiate intoxication. Mrs. Fodell explained that when she was going through her husband's things after his death,

she found two prescription bottles that were filled by Evergreens Drug on November 6, 2008. One bottle was for Methadone 10 mg. # 140 and the other was for Oxycodone 30 mg. immediate release #28. Mrs. Fodell counted the pills and found that 29 of the Methadone were missing and eight and-a-half of the Oxycodone tablets were missing. Mrs. Fodell was unaware that her husband had the prescriptions filled at Evergreens Drug. Mrs. Fodell believed that Mr. Fodell had consumed the medication he received from Evergreens Drug and he was hiding them from her. Mrs. Fodell went to Walgreens and was given her husband's prescription records without problem. But when she tried to obtain her husband's information from Respondent Evergreens Drug, she was initially refused. When Mrs. Fodell returned one week later, she was given a copy of the prescriptions on file and his patient profile. Mrs. Fodell reviewed the Walgreen's prescriptions and the Evergreens Drug prescriptions and found that they were exactly the same. Additionally, Mrs. Fodell reviewed a copy of the Nevada Controlled Substances Task Force patient profile for her husband and found that the prescriptions that had been filled by Respondent Evergreens Drugs were not listed on the report.

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On October 1, 2009, Respondent Tran was interviewed and admitted that he had provided Mrs. Fodell a copy of the prescriptions on April 7, 2009 that had been faxed to him by Respondent Haduong's office on November 6, 2008. When questioned about why the prescriptions that had been faxed to the Board of Pharmacy on August 24, 2009 were dated November 6, 2008, Respondent Tran admitted that he could not find the original prescriptions and as a result of this investigation contacted Respondent Haduong's office to have the original prescriptions re-written and that is what was

provided to the Board for its investigation. Respondent Tran did not have an explanation as to why he did not contact Respondent Haduong for the prescriptions when Mrs. Fodell first contacted him. Respondent Tran admitted that he was aware that only a physician may call in an emergency prescription fill. When asked why Respondent Tran would fill a prescription for two CII prescriptions based on a fax that was written three months earlier and then not follow-up with a hard copy prescription, Respondent Tran stated that he filled the prescriptions in good faith but now realizes that his actions did not comply with Nevada law.

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prescriptions re-written for November 6, 2008. Respondent Haduong admitted that he rewrote the prescriptions without looking at Gregory Fodell's chart, believing that Respondent Tran must have lost or misplaced the prescriptions. When asked why Respondent Haduong had rewritten prescriptions ten months later for prescriptions he claimed he never issued in the first place, Respondent Haduong stated he did it in good faith.

IX.

On November 24, 2009, Respondent Haduong submitted a written response to the Board in which he stated in part:

"The investigation I undertook after you contacted me, has lead me to conclude that on November 6, 2008, my office staff contacted Walgreens and approved the transfer of the September 15, 2008 prescription Mr. Fodell had filled at the pharmacy to Evergreen Pharmacy; that my staff authorized the pharmacist at Evergreen Pharmacy to refill the prescriptions and told him that a hard copy would follow. In addition, my office staff made a follow-up appointment for Mr. Fodell for November 11, 2008. I later learned that the patient died on the date he was to have come and see me."

FIRST CAUSE OF ACTION

X.

For dispensing an oral order for the CII controlled substances namely, Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without an emergency circumstance that would have justified the filling of an orally issued CII prescription, Respondents Tran and Evergreens Drug have violated NRS 453.256(2)(a) and/or NRS 639.210(4) and/or NAC 453.010(2) and/or NAC 453.420 and/or 453.450(1)(b) and/or NAC 639.945(1)(i).

SECOND CAUSE OF ACTION

XI.

For dispensing an order for the CII controlled substances namely, Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without a legally sufficient written prescription of a practitioner, Respondents Tran and Evergreens Drug have violated NRS 453.256(1) and/or NRS 453.377(1) and/or NRS 639.210(4) and/or NAC 453.450(1)(a) and/or NAC 639.945(1)(i).

THIRD CAUSE OF ACTION

XII.

For dispensing faxed prescriptions for the CII controlled substances, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, that were not compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion, issued to a resident of a facility for long-term care, or issued to a patient enrolled in a licensed program that provides hospice care, Respondents Tran and Evergreens Drug have violated NRS 453.256(2)(b) and/or NRS 639.210(4) and/or NAC 639.711(1)(a), (b) and (c) and/or NAC 639.945(1)(i).

FOURTH CAUSE OF ACTION

XIII.

For dispensing CII controlled substances, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, more than 14 days after the date of issue of the prescriptions filled, Respondents Tran and Evergreens Drug have violated NRS 453.431(4) and/or NRS 639.210(4) and/or NAC 639.945(1)(i).

FIFTH CAUSE OF ACTION

XIV.

For soliciting and obtaining the CII controlled substance prescriptions from Dr. Haduong, namely the Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28 prescriptions with the issue date of November 6, 2008, under circumstances in which the prescriptions were false, deceitful, or fraudulent, Respondents Tran and Evergreens Drug have violated NRS 453.331(1)(d) and/or NRS 639.210(4),(9),(15) and/or (17) and/or NAC 639.945(1)(h) and/or (i).

SIXTH CAUSE OF ACTION

XV.

For participating in a course of action that assisted in the fraudulent and deceitful dispensing of controlled substances, or under circumstances that Respondents Tran and Evergreens Drug should have reasonably known that the dispensing of the controlled substances was unlawful, questionable, or illegal, Respondents Tran and Evergreens Drug violated NRS 639.210(4) and/or (12) and/or NAC 945(1)(h), and/or (i). Pursuant to NAC 639.955(7), both orders that were dispensed to Gregory Fodell by Respondents Tran and Evergreens Drug are grouped in this Cause of Action for the Board's administrative convenience, but the Board may impose separate discipline for both the drug orders.

SEVENTH CAUSE OF ACTION

XVI.

For violating the corresponding duty stated in 21 CFR §1306.04(a) by dispensing controlled substance prescriptions for Mr. Fodell that were not issued by a practitioner, namely Respondent Haduong, acting in the usual course of his professional practice,

Respondents Tran and Evergreens Drug, violated NRS 639.210(11) and/or NAC 639.945(1)(i).

EIGHTH CAUSE OF ACTION

XVII.

In owning and operating the pharmacy in which the above acts and violations occurred, Respondent Evergreens Drug, violated NRS 639.210(4) and/or NAC 639.945(1)(i) and/or (2).

NINTH CAUSE OF ACTION

XVIII.

For his office's issuance of the oral order for the CII controlled substances for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, placed by his staff to Respondents Tran and Evergreens Drug on November 6, 2008, which oral prescriptions were for CII controlled substances under non-emergency circumstances, Respondent Haduong has violated NRS 639.2355 and/or NRS 453.256(2)(a) and/or NRS 639.210(4) and/or NAC 453.010(2) and/or NAC 453.450(1)(b) and/or NAC 639.945(1)(i).

TENTH CAUSE OF ACTION

XIX.

For issuing oral orders on November 6, 2008 for the CII controlled substances for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without an emergency that would justify the oral prescriptions, Respondent Haduong has violated NRS 453.256(2)(a) and/or NRS 639.210(4) and/or NAC 453.010(2) and/or NAC 639.945(1)(i).

ELEVENTH CAUSE OF ACTION

XX.

For issuing the false or fraudulent CII controlled substance prescriptions with a purported issuance date of November 6, 2008 for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, but which were actually written in August 2009, ten months after the date of the purported issuance date, Respondent Haduong has violated NRS 453.331(1)(i) and/or NRS 639.210(4) and/or (9) and/or NAC 639.945(1)(h) and/or (i).

TWELFTH CAUSE OF ACTION

XXI.

For violating the his duty stated in 21 CFR §1306.04(a) to assure that his CII controlled substances prescriptions for Mr. Fodell were issued in the regular course of his practice and for a legitimate medical purpose under circumstances which were not in the usual course of his practice and could not be known by him to be for a legitimate medical purpose by issuing prescriptions for CII controlled substances for Mr. Fodell on November 6, 2008, Respondent Haduong, violated 21 CFR § 1306.04(a) and/or NRS 639.210(4) and/or (11) and/or NAC 639.945(1)(i).

THIRTEENTH CAUSE OF ACTION

XXII.

For prescribing an order for the CII controlled substances for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without a legally sufficient written prescription, Respondent Haduong has violated NRS 453.256(1) and/or NRS 639.210(4) and/or NAC 639.945(1)(i).

FOURTEENTH CAUSE OF ACTION

XXIII.

For authorizing a refill for the CII controlled substance prescriptions for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, Respondent Haduong has violated 21 CFR §1306.12(a) and/or NRS 453.256(2)(b) and/or NRS 639.210(4) and/or (11) and/or NAC 639.945(1)(i).

FIFTEENTH CAUSE OF ACTION

XXIV.

For participating in a course of action that assisted in the fraudulent and deceitful dispensing of controlled substances to Mr. Fodell, or under circumstances that Respondent Hadoung should have reasonably known that the dispensing controlled substances was unlawful, questionable, or illegal, Respondent Hadoung violated NRS 639.210(4) and/or (12) and/or NAC 945(1)(h), and/or (i). Pursuant to NAC 639.955(7), both orders that were dispensed to Gregory Fodell by Respondents Tran and Evergreens Drug are grouped in this cause of action for the Board's administrative convenience, but the Board may impose separate discipline for both of the drug orders.

WHEREFORE it is requested that the Nevada State Board of Pharmacy take appropriate disciplinary action with respect to the certificates of registration of the Respondents.

Signed this 11th day of December, 2009.


Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements regarding your certificate of registration. To do so, you must mail to the Board within 15 days of your receipt of this Notice of Intended Action and Accusation a written statement showing your compliance.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

**Petitioner, STATEMENT TO THE RESPONDENT
v. NOTICE OF INTENDED ACTION
 AND ACCUSATION
 RIGHT TO HEARING**

**EVERGREENS DRUG
Certificate of Registration No. PH02055**

Case No. 09-029-PH-S

Respondent.

_____ /

TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

I.

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B, a Notice of Intended Action and Accusation has been filed with the board by the Petitioner, Larry L. Pinson, Executive Secretary for the board, alleging grounds for imposition of disciplinary action by the board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

II.

You have the right to a hearing before the Nevada State Board of Pharmacy to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. It is required that you complete two copies of the Answer and Notice of Defense documents served herewith and file said copies with the Nevada State Board of Pharmacy within fifteen (15) days of receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within.


III.

The Board has reserved Wednesday, January 13, 2010 as the date for a hearing on this matter at the Las Vegas Chamber of Commerce, 6671 Las Vegas Boulevard South, Las Vegas, Nevada. The hour of the hearing will be set by letter to follow.

IV.

Failure to complete and file your Notice of Defense with the board and thereby request a hearing within the time allowed shall constitute a waiver of your right to a hearing in this matter and give cause for the entering of your default to the Notice of Intended Action and Accusation filed herein, unless the board, in its sole discretion, elects to grant or hold a hearing nonetheless.

DATED this 11th day of December, 2009.



Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

v.

Petitioner,

ANSWER AND NOTICE
OF DEFENSE

EVERGREENS DRUG
Certificate of Registration No. PH02055

Case No. 09-029-PH-S

Respondent.

Evergreens Drug /

Respondent above named, in answer to the Notice of Intended Action and Accusation filed in the above-entitled matter before the Nevada State Board of Pharmacy, declares:

1. That his objection to the Notice of Intended Action and Accusation as being incomplete or failing to state clearly the charges against him, is hereby interposed on the following grounds: (State specific objections or insert "none").


DEC 21 2009

2. That, in answer to the Notice of Intended Action and Accusation, he admits, denies and alleges as follows:

I hereby declare, under penalty of perjury, that the foregoing Answer and Notice of Defense, and all facts therein stated, are true and correct to the best of my knowledge.

DATED this 18 day of December, 2009.

Sean Tran
type or print name


For Evergreens Drug

prescriptions for Methadone and Oxycodone on September 15, 2008 by Respondent Quan Haduong, M.D., that were filled at Walgreens Pharmacy #6545. Mrs. Fodell claimed that her husband had the exact same prescriptions that were filled at Walgreens Pharmacy #6545 on September 15, 2008, also filled at Evergreens Drug on November 6, 2008. Mrs. Fodell concluded that her husband, Gregory, died on November 11, 2008 as a result of opiate intoxication.

III.

On August 24, 2009, the Board was provided by the staff of Respondent Evergreens Drug copies of the front of the two prescriptions that were filled on November 6, 2008 as well as the patient profile of Gregory Fodell from its computer system. These documents were provided by the staff of Respondent Evergreens Drug at Respondent Tran's direction. These prescriptions were faxed and the fax showed a time and date stamp of August 24, 2009. The prescriptions that were faxed to the Board on August 24, 2009 were issued by Respondent Haduong and showed an issue date of November 6, 2008.

IV.

On September 2, 2009, Board staff contacted Walgreens Pharmacy #6545 and requested patient records for Gregory Fodell. Walgreens #6545 provided Gregory Fodell's patient profile as well as copies of the Methadone and Oxycodone prescriptions that were filled on September 15, 2008.

V.

On September 4, 2009, Respondent Tran, who is the owner of and pharmacy manager for Respondent Evergreens Drug, stated that on November 6, 2008 he had received a telephone call from Jennifer Palmer, a medical assistant from Respondent

Haduong's office, advising him that she had a patient (Gregory Fodell) for whom Respondent Haduong had approved a one week emergency fill for Methadone and Oxycodone, but because Respondent Haduong was performing a procedure, he was unable to write the prescriptions at that time. Respondent Tran stated that Ms. Palmer told him that Gregory Fodell had an appointment to be seen by Respondent Haduong the following week but was not able to come to the office at this time. Ms. Palmer faxed Respondent Tran a copy of the prescriptions that had been written by Respondent Haduong on September 15, 2008. Respondent Tran said that he told Ms. Palmer that the original prescriptions would need to be mailed within 72 hours. Respondent Tran stated that on November 6, 2008 he filled the prescriptions for the Methadone and Oxycodone off of the faxed copies of the September 15, 2008 prescriptions and then dispensed the medication to Gregory Fodell. Both Methadone and Oxycodone are CII controlled substances.

VI.

On September 8, 2009, in her oral interview, Eleanor Fodell stated that her husband had suffered a back injury and was referred to pain management physician Respondent Haduong. Eleanor Fodell stated that on September 15, 2008, her husband Gregory Fodell was seen by Respondent Haduong and was issued a prescription for Methadone 10 mg. #140 and for Oxycodone 30 mg. immediate release #28. Mrs. Fodell stated that these prescriptions were filled at Walgreens that same day. Mrs. Fodell stated that her husband died on November 11, 2008 and it was determined by the Clark County Coroner's Office that he died as a result of coronary atherosclerosis and a significant contributing condition was opiate intoxication. Mrs. Fodell explained that when she was going through her husband's things after his death,

she found two prescription bottles that were filled by Evergreens Drug on November 6, 2008. One bottle was for Methadone 10 mg. # 140 and the other was for Oxycodone 30 mg. immediate release #28. Mrs. Fodell counted the pills and found that 29 of the Methadone were missing and eight and-a-half of the Oxycodone tablets were missing. Mrs. Fodell was unaware that her husband had the prescriptions filled at Evergreens Drug. Mrs. Fodell believed that Mr. Fodell had consumed the medication he received from Evergreens Drug and he was hiding them from her. Mrs. Fodell went to Walgreens and was given her husband's prescription records without problem. But when she tried to obtain her husband's information from Respondent Evergreens Drug, she was initially refused. When Mrs. Fodell returned one week later, she was given a copy of the prescriptions on file and his patient profile. Mrs. Fodell reviewed the Walgreen's prescriptions and the Evergreens Drug prescriptions and found that they were exactly the same. Additionally, Mrs. Fodell reviewed a copy of the Nevada Controlled Substances Task Force patient profile for her husband and found that the prescriptions that had been filled by Respondent Evergreens Drugs were not listed on the report.

VII.

On October 1, 2009, Respondent Tran was interviewed and admitted that he had provided Mrs. Fodell a copy of the prescriptions on April 7, 2009 that had been faxed to him by Respondent Haduong's office on November 6, 2008. When questioned about why the prescriptions that had been faxed to the Board of Pharmacy on August 24, 2009 were dated November 6, 2008, Respondent Tran admitted that he could not find the original prescriptions and as a result of this investigation contacted Respondent Haduong's office to have the original prescriptions re-written and that is what was

provided to the Board for its investigation. Respondent Tran did not have an explanation as to why he did not contact Respondent Haduong for the prescriptions when Mrs. Fodell first contacted him. Respondent Tran admitted that he was aware that only a physician may call in an emergency prescription fill. When asked why Respondent Tran would fill a prescription for two CII prescriptions based on a fax that was written three months earlier and then not follow-up with a hard copy prescription, Respondent Tran stated that he filled the prescriptions in good faith but now realizes that his actions did not comply with Nevada law.

VIII.

On November 9, 2009, Respondent Haduong stated in his oral interview that he had seen Gregory Fodell one time, on September 15, 2008, and after examining him had issued him a prescription for Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28. Both prescriptions were for a seven-day supply. Respondent Haduong stated that Gregory Fodell was to follow up in one week but failed to make his appointment. Respondent Haduong maintains that he only had contact with Gregory Fodell that one time and that his medical assistant Jennifer Palmer, who left his practice in January 2009, was the one who made contact with Respondent Tran at Evergreens Drug and faxed the copy of the September 15, 2008 prescriptions to Evergreens Drug to be filled for Gregory Fodell. Respondent Haduong stated and maintained that he did not authorize the prescriptions for Gregory Fodell that were filled by Respondent Tran at Evergreens Drug. He did admit that he has on occasion authorized his staff to call in prescriptions for patients, but again stated he did not believe he authorized the prescriptions for Gregory Fodell on November 6, 2008. Respondent Haduong stated that his office had been contacted by Respondent Tran in August of 2009 to have the

prescriptions re-written for November 6, 2008. Respondent Haduong admitted that he rewrote the prescriptions without looking at Gregory Fodell's chart, believing that Respondent Tran must have lost or misplaced the prescriptions. When asked why Respondent Haduong had rewritten prescriptions ten months later for prescriptions he claimed he never issued in the first place, Respondent Haduong stated he did it in good faith.

IX.

On November 24, 2009, Respondent Haduong submitted a written response to the Board in which he stated in part:

"The investigation I undertook after you contacted me, has lead me to conclude that on November 6, 2008, my office staff contacted Walgreens and approved the transfer of the September 15, 2008 prescription Mr. Fodell had filled at the pharmacy to Evergreen Pharmacy; that my staff authorized the pharmacist at Evergreen Pharmacy to refill the prescriptions and told him that a hard copy would follow. In addition, my office staff made a follow-up appointment for Mr. Fodell for November 11, 2008. I later learned that the patient died on the date he was to have come and see me."

FIRST CAUSE OF ACTION

X.

For dispensing an oral order for the CII controlled substances namely, Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without an emergency circumstance that would have justified the filling of an orally issued CII prescription, Respondents Tran and Evergreens Drug have violated NRS 453.256(2)(a) and/or NRS 639.210(4) and/or NAC 453.010(2) and/or NAC 453.420 and/or 453.450(1)(b) and/or NAC 639.945(1)(i).

SECOND CAUSE OF ACTION

XI.

For dispensing an order for the CII controlled substances namely, Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without a legally sufficient written prescription of a practitioner, Respondents Tran and Evergreens Drug have violated NRS 453.256(1) and/or NRS 453.377(1) and/or NRS 639.210(4) and/or NAC 453.450(1)(a) and/or NAC 639.945(1)(i).

THIRD CAUSE OF ACTION

XII.

For dispensing faxed prescriptions for the CII controlled substances, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, that were not compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion, issued to a resident of a facility for long-term care, or issued to a patient enrolled in a licensed program that provides hospice care, Respondents Tran and Evergreens Drug have violated NRS 453.256(2)(b) and/or NRS 639.210(4) and/or NAC 639.711(1)(a), (b) and (c) and/or NAC 639.945(1)(i).

FOURTH CAUSE OF ACTION

XIII.

For dispensing CII controlled substances, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, more than 14 days after the date of issue of the prescriptions filled, Respondents Tran and Evergreens Drug have violated NRS 453.431(4) and/or NRS 639.210(4) and/or NAC 639.945(1)(i).

FIFTH CAUSE OF ACTION

XIV.

For soliciting and obtaining the CII controlled substance prescriptions from Dr. Haduong, namely the Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28 prescriptions with the issue date of November 6, 2008, under circumstances in which the prescriptions were false, deceitful, or fraudulent, Respondents Tran and Evergreens Drug have violated NRS 453.331(1)(d) and/or NRS 639.210(4),(9),(15) and/or (17) and/or NAC 639.945(1)(h) and/or (i).

SIXTH CAUSE OF ACTION

XV.

For participating in a course of action that assisted in the fraudulent and deceitful dispensing of controlled substances, or under circumstances that Respondents Tran and Evergreens Drug should have reasonably known that the dispensing of the controlled substances was unlawful, questionable, or illegal, Respondents Tran and Evergreens Drug violated NRS 639.210(4) and/or (12) and/or NAC 945(1)(h), and/or (i). Pursuant to NAC 639.955(7), both orders that were dispensed to Gregory Fodell by Respondents Tran and Evergreens Drug are grouped in this Cause of Action for the Board's administrative convenience, but the Board may impose separate discipline for both the drug orders.

SEVENTH CAUSE OF ACTION

XVI.

For violating the corresponding duty stated in 21 CFR §1306.04(a) by dispensing controlled substance prescriptions for Mr. Fodell that were not issued by a practitioner, namely Respondent Haduong, acting in the usual course of his professional practice,

Respondents Tran and Evergreens Drug, violated NRS 639.210(11) and/or NAC 639.945(1)(i).

EIGHTH CAUSE OF ACTION

XVII.

In owning and operating the pharmacy in which the above acts and violations occurred, Respondent Evergreens Drug, violated NRS 639.210(4) and/or NAC 639.945(1)(i) and/or (2).

NINTH CAUSE OF ACTION

XVIII.

For his office's issuance of the oral order for the CII controlled substances for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, placed by his staff to Respondents Tran and Evergreens Drug on November 6, 2008, which oral prescriptions were for CII controlled substances under non-emergency circumstances, Respondent Haduong has violated NRS 639.2355 and/or NRS 453.256(2)(a) and/or NRS 639.210(4) and/or NAC 453.010(2) and/or NAC 453.450(1)(b) and/or NAC 639.945(1)(i).

TENTH CAUSE OF ACTION

XIX.

For issuing oral orders on November 6, 2008 for the CII controlled substances for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without an emergency that would justify the oral prescriptions, Respondent Haduong has violated NRS 453.256(2)(a) and/or NRS 639.210(4) and/or NAC 453.010(2) and/or NAC 639.945(1)(i).

ELEVENTH CAUSE OF ACTION

XX.

For issuing the false or fraudulent CII controlled substance prescriptions with a purported issuance date of November 6, 2008 for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, but which were actually written in August 2009, ten months after the date of the purported issuance date, Respondent Haduong has violated NRS 453.331(1)(i) and/or NRS 639.210(4) and/or (9) and/or NAC 639.945(1)(h) and/or (i).

TWELFTH CAUSE OF ACTION

XXI.

For violating the his duty stated in 21 CFR §1306.04(a) to assure that his CII controlled substances prescriptions for Mr. Fodell were issued in the regular course of his practice and for a legitimate medical purpose under circumstances which were not in the usual course of his practice and could not be known by him to be for a legitimate medical purpose by issuing prescriptions for CII controlled substances for Mr. Fodell on November 6, 2008, Respondent Haduong, violated 21 CFR § 1306.04(a) and/or NRS 639.210(4) and/or (11) and/or NAC 639.945(1)(i).

THIRTEENTH CAUSE OF ACTION

XXII.

For prescribing an order for the CII controlled substances for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, without a legally sufficient written prescription, Respondent Haduong has violated NRS 453.256(1) and/or NRS 639.210(4) and/or NAC 639.945(1)(i).

FOURTEENTH CAUSE OF ACTION

XXIII.

For authorizing a refill for the CII controlled substance prescriptions for Mr. Fodell, namely Methadone 10 mg. #140 and Oxycodone 30 mg. immediate release #28, Respondent Haduong has violated 21 CFR §1306.12(a) and/or NRS 453.256(2)(b) and/or NRS 639.210(4) and/or (11) and/or NAC 639.945(1)(i).

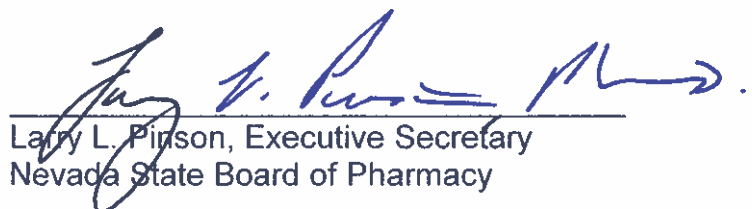
FIFTEENTH CAUSE OF ACTION

XXIV.

For participating in a course of action that assisted in the fraudulent and deceitful dispensing of controlled substances to Mr. Fodell, or under circumstances that Respondent Haduong should have reasonably known that the dispensing controlled substances was unlawful, questionable, or illegal, Respondent Haduong violated NRS 639.210(4) and/or (12) and/or NAC 945(1)(h), and/or (i). Pursuant to NAC 639.955(7), both orders that were dispensed to Gregory Fodell by Respondents Tran and Evergreens Drug are grouped in this cause of action for the Board's administrative convenience, but the Board may impose separate discipline for both of the drug orders.

WHEREFORE it is requested that the Nevada State Board of Pharmacy take appropriate disciplinary action with respect to the certificates of registration of the Respondents.

Signed this 11th day of December, 2009.


Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements regarding your certificate of registration. To do so, you must mail to the Board within 15 days of your receipt of this Notice of Intended Action and Accusation a written statement showing your compliance.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

**Petitioner, STATEMENT TO THE RESPONDENT
v. NOTICE OF INTENDED ACTION
 AND ACCUSATION
 RIGHT TO HEARING**

**QUAN HADUONG, M.D.
Certificate of Registration No. CS08110**

Case No. 09-029-CS-S

Respondent.

_____/

TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

I.

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B, a Notice of Intended Action and Accusation has been filed with the board by the Petitioner, Larry L. Pinson, Executive Secretary for the board, alleging grounds for imposition of disciplinary action by the board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

II.

You have the right to a hearing before the Nevada State Board of Pharmacy to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. It is required that you complete two copies of the Answer and Notice of Defense documents served herewith and file said copies with the Nevada State Board of Pharmacy within fifteen (15) days of receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within.


III.

The Board has reserved Wednesday, January 13, 2010 as the date for a hearing on this matter at the Las Vegas Chamber of Commerce, 6671 Las Vegas Boulevard South, Las Vegas, Nevada. The hour of the hearing will be set by letter to follow.

IV.

Failure to complete and file your Notice of Defense with the Board and thereby request a hearing within the time allowed shall constitute a waiver of your right to a hearing in this matter and give cause for the entering of your default to the Notice of Intended Action and Accusation filed herein, unless the board, in its sole discretion, elects to grant or hold a hearing nonetheless.

DATED this 11th day of December, 2009.



Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

**ANSWER AND NOTICE
OF DEFENSE**

**QUAN HADUONG, M.D.
Certificate of Registration No. CS08110**

Case No. 09-029-CS-S

Respondent.

_____ /

Respondent above named, in answer to the Notice of Intended Action and Accusation filed in the above-entitled matter before the Nevada State Board of Pharmacy, declares:

1. That his objection to the Notice of Intended Action and Accusation as being incomplete or failing to state clearly the charges against him, is hereby interposed on the following grounds: (State specific objections or insert "none").

2. That, in answer to the Notice of Intended Action and Accusation, he admits, denies and alleges as follows:

I hereby declare, under penalty of perjury, that the foregoing Answer and Notice of Defense, and all facts therein stated, are true and correct to the best of my knowledge.

DATED this _____ day of _____, 2009.

Quan Haduong, M.D.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

JAMES R. THOMPSON, RPH

Certificate of Registration No. 16742

CVS #8789

Certificate of Registration No. PH01257,

Respondents.

**NOTICE OF INTENDED ACTION
AND ACCUSATION**

Case No. 09-016-RPH-S

Case No. 09-016-PH-S

COMES NOW Larry L. Pinson, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, and makes the following that will serve as both a notice of intended action under Nevada Revised Statutes (NRS) 233B.127(3) and as an accusation under NRS 639.241.

I.

The Nevada State Board of Pharmacy has jurisdiction over this matter because Respondent James R. Thompson is a pharmacist licensed by the Board and CVS #8789 is a pharmacy licensed by the Board, located at 100 South Nevada Highway 160, Pahrump, Nevada.

II.

On or about November 25, 2008, Richard Linton had his prescription for Humulin R filled at CVS #8789. When Mr. Linton returned home with the medication that was given to him at CVS #8789 he noticed that the bottle was larger in diameter than what he had been using but he used what he was given as he normally would. In December, 2008, Mr. Linton went on vacation to Missouri and Kentucky where he experienced severe low blood sugar on two or three occasions and paramedics were called to

stabilize him.

III.

When Mr. Linton got home from his vacation he went to use another one of the bottles of Humulin R he was given on November 25, 2008 and noticed that the expiration date on the bottle he was about to use was January 2009 even though the label indicated it would expire in November 2009. Mr. Linton returned to CVS #8789 to exchange it for one that was not about to expire. It was then discovered that Mr. Linton had received Humulin that was meant to be used with an insulin pump rather than taken by injection.

IV.

Mr. Thompson was the managing pharmacist for CVS #8789 who was responsible for filling and verification of the prescription, however Mr. Thompson admitted that he did not scan the medication nor did he notice that he was filling the prescription with Humulin U-500 rather than the prescribed Humulin R U-100.

FIRST CAUSE OF ACTION

V.

By filling and dispensing a prescription for Richard Linton that was the wrong medication, namely Humulin U-500 insulin rather than the Humulin R U-100 insulin prescribed by Mr. Linton's physician and transferred from Smith's pharmacy, Respondent Thompson violated NRS 639.210(4) and/or NAC 639.945(1)(d) and/or (i).


SECOND CAUSE OF ACTION

VI.

In owning and operating the store in which the violations occurred, CVS #8789 violated NRS 639.210(4) and/or NAC 639.945(1)(i) and/or (2).

WHEREFORE it is requested that the Nevada State Board of Pharmacy take appropriate disciplinary action with respect to the certificates of registration of the Respondents.

Signed this 8th day of December, 2009.


Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements regarding your certificate of registration. To do so, you must mail to the Board within 15 days of your receipt of this Notice of Intended Action and Accusation a written statement showing your compliance.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

v.

**Petitioner, STATEMENT TO THE RESPONDENT
NOTICE OF INTENDED ACTION
AND ACCUSATION
RIGHT TO HEARING**

**JAMES R. THOMPSON, RPH
Certificate of Registration No. 16742**

Case No. 09-016-RPH-S

Respondent.

_____/

TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

I.

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B, a Notice of Intended Action and Accusation has been filed with the board by the Petitioner, Larry L. Pinson, Executive Secretary for the board, alleging grounds for imposition of disciplinary action by the board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

II.

You have the right to a hearing before the Nevada State Board of Pharmacy to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. It is required that you complete two copies of the Answer and Notice of Defense documents served herewith and file said copies with the Nevada State Board of Pharmacy within fifteen (15) days of receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within.

III.

The Board has reserved Wednesday, January 14, 2010 as the date for a hearing on this matter at the Las Vegas Chamber of Commerce, 6671 Las Vegas Boulevard South, Las Vegas, Nevada. The hour of the hearing will be set by letter to follow.

IV.

Failure to complete and file your Notice of Defense with the board and thereby request a hearing within the time allowed shall constitute a waiver of your right to a hearing in this matter and give cause for the entering of your default to the Notice of Intended Action and Accusation filed herein, unless the board, in its sole discretion, elects to grant or hold a hearing nonetheless.

DATED this 8th day of December, 2009.



Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,
v.

ANSWER AND NOTICE
OF DEFENSE

JAMES R. THOMPSON, RPH
Certificate of Registration No. 16742

Case No. 09-016-RPH-S

Respondent.

Respondent above named, in answer to the Notice of Intended Action and Accusation filed in the above-entitled matter before the Nevada State Board of Pharmacy, declares:

1. That his objection to the Notice of Intended Action and Accusation as being _____ incomplete or failing to state clearly the charges against him, is hereby interposed on the following grounds: (State specific objections or insert "none").

None, at this time.

2. That, in answer to the Notice of Intended Action and Accusation, he admits, denies and alleges as follows:

CVS records indicate that the patient received one vial of insulin, which was returned to the pharmacy unopened. Patient stated that he had not used it, and the unopened vial returned confirms it was not used.

I hereby declare, under penalty of perjury, that the foregoing Answer and Notice of Defense, and all facts therein stated, are true and correct to the best of my knowledge.

DATED this 8th day of February, 2010, ~~2009~~ //


James R. Thompson

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

JAMES R. THOMPSON, RPH

Certificate of Registration No. 16742

CVS #8789

Certificate of Registration No. PH01257,

Respondents.

**NOTICE OF INTENDED ACTION
AND ACCUSATION**

Case No. 09-016-RPH-S

Case No. 09-016-PH-S

_____ /

COMES NOW Larry L. Pinson, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, and makes the following that will serve as both a notice of intended action under Nevada Revised Statutes (NRS) 233B.127(3) and as an accusation under NRS 639.241.

I.

The Nevada State Board of Pharmacy has jurisdiction over this matter because Respondent James R. Thompson is a pharmacist licensed by the Board and CVS #8789 is a pharmacy licensed by the Board, located at 100 South Nevada Highway 160, Pahrump, Nevada.

II.

On or about November 25, 2008, Richard Linton had his prescription for Humulin R filled at CVS #8789. When Mr. Linton returned home with the medication that was given to him at CVS #8789 he noticed that the bottle was larger in diameter than what he had been using but he used what he was given as he normally would. In December, 2008, Mr. Linton went on vacation to Missouri and Kentucky where he experienced severe low blood sugar on two or three occasions and paramedics were called to

stabilize him.

III.

When Mr. Linton got home from his vacation he went to use another one of the bottles of Humulin R he was given on November 25, 2008 and noticed that the expiration date on the bottle he was about to use was January 2009 even though the label indicated it would expire in November 2009. Mr. Linton returned to CVS #8789 to exchange it for one that was not about to expire. It was then discovered that Mr. Linton had received Humulin that was meant to be used with an insulin pump rather than taken by injection.

IV.

Mr. Thompson was the managing pharmacist for CVS #8789 who was responsible for filling and verification of the prescription, however Mr. Thompson admitted that he did not scan the medication nor did he notice that he was filling the prescription with Humulin U-500 rather than the prescribed Humulin R U-100.

FIRST CAUSE OF ACTION

V.

By filling and dispensing a prescription for Richard Linton that was the wrong medication, namely Humulin U-500 insulin rather than the Humulin R U-100 insulin prescribed by Mr. Linton's physician and transferred from Smith's pharmacy, Respondent Thompson violated NRS 639.210(4) and/or NAC 639.945(1)(d) and/or (i).

SECOND CAUSE OF ACTION

VI.

In owning and operating the store in which the violations occurred, CVS #8789 violated NRS 639.210(4) and/or NAC 639.945(1)(i) and/or (2).

WHEREFORE it is requested that the Nevada State Board of Pharmacy take appropriate disciplinary action with respect to the certificates of registration of the Respondents.

Signed this 8th day of December, 2009.


Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements regarding your certificate of registration. To do so, you must mail to the Board within 15 days of your receipt of this Notice of Intended Action and Accusation a written statement showing your compliance.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

**Petitioner, STATEMENT TO THE RESPONDENT
v. NOTICE OF INTENDED ACTION
 AND ACCUSATION
 RIGHT TO HEARING**

**CVS #8789
Certificate of Registration No. PH01257**

Case No. 09-016-PH-S

Respondent.

_____ /

TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

I.

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B, a Notice of Intended Action and Accusation has been filed with the board by the Petitioner, Larry L. Pinson, Executive Secretary for the board, alleging grounds for imposition of disciplinary action by the board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

II.

You have the right to a hearing before the Nevada State Board of Pharmacy to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. It is required that you complete two copies of the Answer and Notice of Defense documents served herewith and file said copies with the Nevada State Board of Pharmacy within fifteen (15) days of receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within.

III.

The Board has reserved Wednesday, January 14, 2010 as the date for a hearing on this matter at the Las Vegas Chamber of Commerce, 6671 Las Vegas Boulevard South, Las Vegas, Nevada. The hour of the hearing will be set by letter to follow.

IV.

Failure to complete and file your Notice of Defense with the board and thereby request a hearing within the time allowed shall constitute a waiver of your right to a hearing in this matter and give cause for the entering of your default to the Notice of Intended Action and Accusation filed herein, unless the board, in its sole discretion, elects to grant or hold a hearing nonetheless.

DATED this 8th day of December, 2009.



Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

2. That, in answer to the Notice of Intended Action and Accusation, he admits, denies and alleges as follows:

I hereby declare, under penalty of perjury, that the foregoing Answer and Notice of Defense, and all facts therein stated, are true and correct to the best of my knowledge.

DATED this _____ day of _____, 2009.

type or print name

For CVS #8789

MICHAEL W. DYER
SANDRA G. LAWRENCE*
JAMES W. PENROSE*
FRANCIS C. FLAHERTY
THOMAS J. DONALDSON
JESSICA C. PRUNTY

* ALSO ADMITTED IN CALIFORNIA



PAUL D. COTSONIS
TODD E. REESE*
SUE S. MATUSKA*
J. DANIEL YU

OF COUNSEL
MARGARET A. TWEDT*
HON. MICHAEL E. FONDI*



March 24, 2010

Ms. Jeri L. Walter, Board Coordinator
Nevada State Board of Pharmacy
431 West Plumb Lane
Reno, NV 89509

RE: CVS PHARMACY #8789; Case No. 09-016-PH-S

Dear Ms. Walter:

Enclosed, please find the original and one copy of *Respondent's Motion to Dismiss for Failure to State a Claim and for Lack of Jurisdiction; Memorandum in Support Thereof* in the above referenced matter. Please file the original and return a file-stamped copy to us in the enclosed self addressed, stamped envelope.

Thank you for your assistance in this matter.

Sincerely,

Dyer, Lawrence, Penrose,
Flaherty, Donaldson & Prunty

Sharon Coates, PP, PLS
Legal Secretary to Michael W. Dyer

Enclosures

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BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

JAMES R. THOMPSON, RPH
Certificate of Registration No. 16742;

CVS PHARMACY #8789
Certificate of Registration No. PH01257;

Respondents.

MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM AND FOR LACK
OF JURISDICTION; MEMORANDUM
IN SUPPORT THEREOF

Case No. 09-016-RPH-S

Case No. 09-016-PH-S

TO THE NEVADA STATE BOARD OF PHARMACY AND THEIR ATTORNEYS
OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to Nevada Revised Statute ("NRS") 639.241 *et seq.*, and NRS 233B.121 *et seq.*, Respondent CVS Pharmacy #8789 ("CVS") by and through its counsel, Michael W. Dyer, of Dyer, Lawrence, Penrose, Flaherty, Donaldson & Prunty, hereby moves to dismiss the Second alleged Cause of Action against CVS in Case No. 09-016-PH-S in the Notice of Intended Action and Accusation, filed on December 8, 2009, ("Accusation") by Petitioner, the Nevada State Board of Pharmacy ("Board"), for failure to state a claim and for lack of jurisdiction. CVS requests that its motion to dismiss be heard at the April 2010 Board meeting, prior to the disciplinary hearing on the Accusation.

This motion is based upon the following facts: (a) the Board's Accusation does not allege any facts indicating that CVS took any actions or made any omissions; (b) the

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Board lacks jurisdiction and/or the authority to impose vicarious or strict liability against CVS under NAC 639.945, as enacted under NRS 639.070 and/or NRS 639.210, solely based upon the Pharmacist's actions.

This motion is based on this notice and motion to dismiss, the accompanying memorandum of points and authorities, the pleadings, documents, and files of record for the Board in this case, and on such evidence and argument as may be presented at the time of the hearings on this matter.

Respectfully submitted this 24th day of March, 2010.

DYER, LAWRENCE, PENROSE,
FLAHERTY, DONALDSON & PRUNTY

By: 
Michael W. Dyer
Todd E. Reese
Attorneys for Respondent CVS #8789

MEMORANDUM OF POINTS AND AUTHORITIES

The Nevada State Board of Pharmacy ("Board") filed a Notice of Intended Action and Accusation on December 8, 2009, ("Accusation") against CVS Pharmacy #8789, ("CVS") Case No. 09-016-PH-S, and against James R. Thompson, RPH, ("Mr. Thompson") Case No. 09-016-RPH-S. This motion is filed solely on behalf of CVS. Mr. Thompson was terminated by CVS, and is not represented by the Dyer Lawrence law firm.

In this action, the Board seeks to, among other things, impose penalties and sanctions on CVS for alleged violations of NRS Chapter 639 and NAC Chapter 639, even though the Board has not alleged that CVS took, or failed to take, any actions which are in violation of any specified provision of NRS Chapter 639, or which caused the misfill of the prescription by Mr. Thompson. Instead, the Accusation merely asserts that CVS violated "NRS 639.210(4) and/or NAC 639.945(1) and/or (2)" by "owning and operating the store in which the violations occurred. . . ." Since it is literally and legally impossible for a properly licensed entity to "violate" any provision of NRS Chapter 639 or NAC Chapter 639 merely by "owning and operating" a pharmacy, which it is properly licensed to own and operate, the only logical conclusion is that the Board is attempting to individually discipline CVS based solely on vicarious and/or strict liability through NAC 639.945(2).

CVS asserts in this Motion to Dismiss that: (a) the Accusation fails to allege facts sufficient to state a claim in the Second Cause of Action for a violation by CVS of NRS 639.210(4) or NAC 639.945(1)(i), and; (b) the Board has no jurisdiction or authority to impose discipline upon CVS based solely on the improper acts of the Pharmacist.

I. FACTUAL AND PROCEDURAL HISTORY

The facts presented for purposes of this Motion to Dismiss are the facts presented by the Board in the Accusation. In relevant portion, they are as follows.

“On or about November 25, 2008, Richard Linton had his prescription for Humulin R filled at CVS #8789.” Accusation, ¶ II. “Mr. Thompson was the managing pharmacist for CVS #8789 who was responsible for filling and verification of the prescription, however Mr. Thompson admitted that he did not scan the medication [at the time when he dispensed the medication to Mr. Linton] nor did [Mr. Thompson] notice that he was filling the prescription with Humulin U-500 rather than the prescribed Humulin R U-100.” Id., ¶ IV.

The Board filed the Accusation on December 8, 2009. The Accusation notes that the Board “has jurisdiction over this matter because Respondent, James R. Thompson, is a pharmacist licensed by the Board and CVS #8789 is a pharmacy licensed by the Board, located at 100 South Nevada Highway 160, Pahrump, Nevada.” Id., ¶ I.

II. DISCUSSION

While considering CVS’s motion to dismiss for failure to state a claim, the Board may view “all factual allegations [in the Accusation] . . . as true and draw all inferences in [the Board’s] favor. [The Accusation] . . . should be dismissed only if it appears beyond a doubt that . . . [the Board] could prove no set of facts, which, if true, would entitle it to relief.” Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. Adv. Rep. 21, 181 P.3d 670, 672 (2008). “Dismissal is proper where the allegations are insufficient to

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establish the elements of a claim for relief.” Stockmeier v. Nev. Dep’t of Corr. Psychological Review Panel, 124 Nev. Adv. Rep. 30, 183 P.3d 133, 135 (2008) (internal quotations omitted.)

A. The Second Cause of Action Fails To State a Claim Because the Allegations in the Accusation Fail to Allege Facts Supporting a Claim Against CVS Under NRS 639.210(4) and/or NAC 639.945(1)(i), And Thus Fails to Meet the Pleading Requirements of NRS 639.241(2) or of Due Process.

1. The Accusation Does Not Allege a Violation of NRS 639.210(4) and/or NAC 639.945(1)(i) By CVS.

In the present accusation, the Board alleges in the Second Cause of Action that CVS has “violated NRS 639.210(4) and/or NAC 639.945(1)(i) and/or (2),” simply by “owning and operating the store in which the violations occurred.” Accusation, ¶ VI. As previously noted, it is not possible for the holder of a valid license to have “violated” any provisions of the NRS or NAC by merely “owning and operating” the pharmacy. Stated differently, there must be some improper action or a failure to take required action, in order for the license holder itself to have “violated” any NRS or NAC provision. Since the Accusation does not allege that CVS, as the license holder, took, or failed to take, any action, the assertion in the Accusation that CVS is subject to discipline by the Board must be based entirely on the premise that the Board may separately discipline license holders under NRS 639.210(4) and/or NAC 639.954(1)(i) and/or (2), solely on the basis of vicarious or strict liability. However, the language of cited provisions of NRS 639.210 and NAC 639.954 reveals that such is not the case.

NRS 639.210(4) provides that the Board may suspend or revoke a certificate, license, registration or permit when the “**holder**” of the certificate, license, registration or permit “[i]s guilty of unprofessional conduct or conduct contrary to the public interest.”

Similarly, NAC 639.945(1)(i) provides that “unprofessional conduct and conduct contrary to the public interest” consists of “Performing any of his duties as the holder of a license, certificate or registration issued by the Board, or as the owner of a business or an entity licensed by the Board, in an incompetent, unskillful or negligent manner.” Thus, NRS 639.210(4) and NAC 639.945(1)(i) require that CVS must have taken some action, or must have failed to act when action is required, in order for the Board to take action against CVS's license. The language of the statute cannot be read as intending any other conclusion.

However, the Accusation does not allege that CVS has done anything, much less that CVS has failed to comply with Nevada law or has acted in an incompetent or unprofessional manner. The only allegations in the Accusation regarding CVS are that “CVS #8789 is a pharmacy licensed by the Board, located at 100 South Nevada Highway 160, Pahrump, Nevada.” Accusation, ¶ I. That “Richard Linton had his prescription for Humulin R filled at CVS #8789.” *Id.*, ¶ II. And that CVS “own[ed] and operat[ed] the store in which the violations occurred.” *Id.*, ¶ VI. ***The Accusation contains no allegations that CVS took any actions, or made any omissions, which caused, or even contributed to, the misfill of Mr. Linton’s prescription.*** The Accusation, taken as true, does not suggest in any manner that CVS has taken any action, let alone incompetent action. Without any assertion of inappropriate action, or failure to take legally mandated action, CVS cannot have acted unprofessionally, or conducted itself in a manner contrary to the public interest. The claims against CVS based on NRS 639.210(4) and/or NAC 639.945(1)(i) must, then, be dismissed.

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2. The Accusation Fails to Meet the Requirements of NRS 639.241(2) and the Principles of Due Process.

In the context of an Accusation before the Board, the requirement to provide basic information about the allegations is codified by NRS 639.241(2), which provides:

The accusation is a written statement of the charges alleged and must set forth in ordinary and concise language ***the acts or omissions with which the respondent is charged*** to the end that the respondent will be able to prepare his defense. The accusation must specify the statutes and regulations which the respondent is alleged to have violated, but must not consist merely of charges phrased in language of the statute or regulation. [Emphasis added].

Thus, the Accusation must state the specific “acts or omissions” that CVS allegedly committed or omitted. However, the only “act or omission” with which CVS is charged is ***“owning and operating the store*** in which the violations occurred.” Accusation, ¶ VI (emphasis added). Essentially, the Board is claiming that the very act of owning and operating a Pharmacy is an “incompetent” act under NAC 639.945(1)(i), which leads to liability under NRS 639.210(4) for “unprofessional conduct or conduct contrary to the public interest.” Stated differently, the Accusation must be read as asserting that a “strict liability” standard¹ exists that allows the imposition of separate, and additional,

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“Strict liability” is generally liability without fault or knowledge. Black’s Law Dictionary, 926 (7th ed. 1999). In the instant context, “strict liability” would mean imposing discipline directly on the Pharmacy where a licensed employee has acted in violation of the pharmacy laws and regulations without the fault, knowledge, or any act of the Pharmacy.

The “strict liability” standard of liability is contrasted with “vicarious liability,” which is the liability imposed on a supervisory party for the acts of its subordinates. Black’s Law Dictionary, 927 (7th ed. 1999). The typical example is *respondeat superior*, where the employer may be required to pay any judgment obtained against an employee by a third party. In the instant context “vicarious liability” means, for example, requiring the Pharmacy to pay a fine imposed on a licensed employee, without imposing separate discipline upon the Pharmacy itself.

See also Kohler v. Inter-Tel Techs., 244 F.3d 1167, 1177 (9th Cir. 2001) (noting the confusion between the two doctrines).

discipline directly against the holder of a pharmacy license; even where (a) the pharmacy license holder has acted in full compliance with all Nevada laws and regulations, (b) the only actions alleged are those of a licensed employee acting in clear violation of the systems, policies and procedures that the holder of the pharmacy license has put into place in order to assure compliance with the provisions of Nevada pharmacy law, and (c) the licensed employee has acted in clear violation of the pharmacy's directives.

The requirement in NRS 639.241(2) that the Accusation contain the facts and allegations against a respondent is simply a codification of the constitutional requirements of due process; that a respondent must be able to understand the charges against him and "prepare his defense." This is the "notice" portion of procedural due process – that is, notice and the opportunity to be heard. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 (1985) ("The essential requirements of due process . . . are notice and an opportunity to respond."); Bell v. Burson, 402 U.S. 535, 542 (1971) ("[D]ue process requires that when a State, [here the Board,] seeks to terminate an interest such as that here involved, it must afford notice and opportunity for hearing . . . before the termination becomes effective." (internal quotations omitted)); Carpenter v. Mineta, 432 F.3d 1029, 1036 (9th Cir. 2005) ("Due process requires notice and an opportunity to be heard."). The notice requirement of due process requires that the "notice [be] reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950).

The notice required by due process is no empty formality. Rather, notice serves to compel the [accusing entity] to be sufficiently specific as to the . . . [allegations] to inform the [respondent/defendant] of what he is

accused of doing so that he can prepare a defense to those charges and not be made to explain away vague charges

Sira v. Morton, 380 F.3d 57, 70 (2nd Cir. 2004) (citations and internal quotation marks and brackets omitted.))² The notice requirement of due process is not met when allegations are so factually vague so as to leave the accused baffled about the accusations against him, or where unpleaded causes of action are prosecuted against the accused. Grijalva v. Shalala, 152 F.3d 1115, 1122 (9th Cir. 1998) ("The appeal rights and other procedural protections available to Medicare beneficiaries are meaningless if the beneficiaries are unaware of the reason for service denial and therefore cannot argue against the denial.").³ This is because lack of notice of the specific facts and claims against a respondent reduces a respondent "to guessing what

² See also Mathews v. Eldridge, 424 U.S. 319, 325 (1976) (holding that notice must be "timely and adequate" and must "detail[] the reasons for a proposed termination." (citing Goldberg v. Kelly, 397 U.S. 254, 267-268 (1970) (termination of welfare benefits))); Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281, 289 n.4 (1974) ("A party is entitled, of course, to know the issues on which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it."); Sira v. Morton, 380 F.3d 57, 70 (2d Cir. 2004) ("Toward this end, due process requires more than a conclusory charge; . . . [the Respondent] must receive notice of at least some 'specific facts' underlying the accusation."); Barnes v. Healy, 980 F.2d 572, 579 (9th Cir. 1992) ("Due process requires notice that gives an agency's reason for its action in sufficient detail that the affected party can prepare a responsive defense."); Department of Educ. v. Bennett, 864 F.2d 655, 659 (9th Cir. 1988) ("[N]otice will be adequate for due process purposes if the party proceeded against understood the issue and was afforded full opportunity to justify his conduct." (internal quotation marks omitted)); Dutchess Bus. Servs. v. Nev. State Bd. of Pharm., 191 P.3d 1159, 1166 (Nev. 2008) ("Administrative bodies must . . . and give notice to the defending party of the issues on which decision will turn and . . . the factual material on which the agency relies for decision so that he may rebut it." (internal quotation marks omitted)); Nevada State Apprenticeship Council v. Joint Apprenticeship & Training Comm. for Elec. Indus., 94 Nev. 763, 766 (1978) ("[D]ue process requirements of notice are satisfied where the parties are sufficiently apprised of the nature of the proceedings so that there is no unfair surprise.")

³ See also NLRB v. Quality C.A.T.V., Inc., 824 F.2d 542, 545-546 (7th Cir. 1987) (holding that notice is not sufficient "where the party never received notice that such a violation is contemplated for prosecution."); NLRB v. Complas Industries, Inc., 714 F.2d 729, 734 (7th Cir. 1983) (holding that "respondent was not provided with notice comporting with due process where the original complaint did not give any indication of the" specific claim that the respondent was found guilty of violating); Soule Glass & Glazing Co. v. NLRB, 652 F.2d 1055, 1074 (1st Cir. 1981) ("Due process prohibits the enforcement of a finding by the Board of a violation neither charged in the complaint nor litigated at the hearing. Stated in the strongest terms, failure to clearly define the issues and advise an employer charged with a violation . . . of the specific complaint he must meet and provide a full hearing upon the issue presented is . . . to deny procedural due process of law." (citations and internal quotation marks omitted.))

evidence can or should be submitted in response and . . . responding to every possible argument against . . . [discipline] at the risk of missing the critical one altogether.” Barnes v. Healy, 980 F.2d 572, 579 (9th Cir. 1992) (citing Gray Panthers v. Schweiker, 652 F.2d 146, 168-69 (D.C. Cir. 1980)); NLRB v. Quality C.A.T.V., Inc., 824 F.2d 542, 545-46 (7th Cir. 1987) (“The situation is different, however, where the party never received notice that such a violation is contemplated for prosecution. In such a case, other evidence may exist or other arguments might be made that the party reasonably chose not to pursue or emphasize in the defense of the only claim of which it had been informed.”).

In the present case, the only basis for disciplining CVS is that CVS owned and operated a pharmacy where a pharmacist allegedly made a mistake. Without more specificity, this is nothing more than an assertion of strict liability. Complaint, ¶ 6. The Accusation contains no allegations of any actions taken by CVS, nor any failure to take required actions. Clearly, simply owning and operating a pharmacy is not an “incompetent act” that is “against public policy.” NRS 639.210(4); NAC 639.945(1)(i). And there are no allegations in the Accusation that CVS acted, or failed to act, or that such action, or failure to act, resulted in a violation by CVS, as the holder of the pharmacy license, of the specified Nevada law: NRS 639.210(4) and NAC 639.945(1)(i). Accordingly, the allegations in the Second Cause of Action based upon NRS 639.210(4) and NAC 639.945(1)(i) fail to state a claim, and violate the pleading requirements of NRS 639.241(2) and the due process requirements of the Fourteenth Amendment of the United States Constitution, and must be dismissed.

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C. The Second Cause of Action Fails To State a Claim Because the Board Lacks Authority to Impose Vicarious and/or Strict Liability Upon a Pharmacy Through NAC 639.945(1)(i) or NAC 639.945(2) as based upon NRS 639.070 or NRS 639.210(4).

1. NAC 639.945 Purports to be Based Upon NRS 639.070 and NRS 639.210(4), Which Do Not Provide For Strict or Vicarious Liability.

NAC 639.945 purports to be based upon NRS 639.070 and NRS 639.210(4). However, NRS 639.070 authorizes the Board's general powers, such as making regulations to enforce NRS Chapter 639, and does not include an authorization to impose fines or penalties based on strict or vicarious liability. NRS 639.210(4) authorizes discipline against "the holder or applicant" of the license, but specifies the type of actions, or inaction, for which discipline may be imposed. NRS 639.210(4) likewise does not include any provision for vicarious liability. Thus, neither statute expressly, or even impliedly, authorizes strict or vicarious liability and any attempt by the Board to impose such strict or vicarious liability would be contrary to the decision of the Nevada Supreme Court in Andrews v. Nevada State Bd. Of Cosmetology, 86 Nev. 207 (1970). As pointed out by the Court:

As an administrative agency the Board has no general or common law powers, but only such powers as have been conferred by law expressly or by implication. [Citations]. Official powers of an administrative agency cannot be assumed by the agency, nor can they be created by the courts in the exercise of their judicial function. [Citations]. The grant of authority to the agency [in the statute] must be clear.

Id. at 208; see also City of Henderson v. Kilgore, 122 Nev. 331, 334-35 (2006); Clark County Sch. Dist. v. Clark County Classroom Teachers Ass'n, 115 Nev. 98, 102 (1999).

Accordingly, because strict or vicarious liability is not authorized in the statutes relied upon by the Board to enact NAC 639.945, there is no basis for the Board to

impose strict or vicarious liability upon a pharmacy. Therefore, to the extent that the Board seeks to hold CVS liable for the acts of Mr. Thompson, the second cause of action against CVS must be dismissed.

2. Even if CVS May Be Held Liable Under these Circumstances, the Accusation Does Not Plead Any Facts Indicating that CVS Has Performed Any Acts, or Failed to Act, that Would Require Discipline.

As discussed above, the Accusation does not allege any facts showing that CVS took any incompetent action under NRS 639.210(4) and NAC 639.945(1)(i). The only allegation of CVS's action or inaction is that CVS "own[ed] and operat[ed] the store in which the violations occurred." Accusation, ¶ VI. To the extent that the Board has any authority to discipline CVS in this case, the allegations of "owning and operating" do not support any form of independent discipline.

In general, the Board is charged with enforcing NRS Chapter 639. If an incident at a pharmacy involves the wrongdoing or failure to act of the pharmacy license holder, the Board can, and must, file an accusation specifying how the license holder violated Nevada law. In such an accusation, the Board must set forth those specific facts that support discipline against the license holder, whether that be for the pharmacy's action, or the pharmacy's knowledge of a situation and willful inaction or ignorance of it. The Board, then, has no need to resort to vicarious or strict liability based upon NAC 639.945(2), as the statutes it is based upon do not support vicarious or strict liability. Andrews, 86 Nev. at 208 ("As an administrative agency the Board has no general or common law powers, but only such powers as have been conferred by law expressly or by implication."). And the Board must allege some specific facts of the pharmacy's

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wrong doing to comport with due process. Barnes, 980 F.2d at 579 ("Due process requires notice that gives an agency's reason for its action in sufficient detail that the affected party can prepare a responsive defense.")


But in this case, the Board did not plead sufficient facts to impose discipline upon CVS. The Accusation does not allege that CVS has done anything, much less that CVS has failed to comply with Nevada law or has acted in an incompetent or unprofessional manner. Because the Accusation does not even suggest in any manner that CVS has taken any action, let alone incompetent action, or has failed to take required action, the second cause of action in the Accusation fails to state a claim against CVS.

III. CONCLUSION

For the reasons stated above, the Accusation fails to state a claim. CVS respectfully moves the Nevada State Board of Pharmacy to dismiss the second cause of action in the Accusation against CVS.

Respectfully submitted this 24th day of March 2010.

DYER, LAWRENCE, PENROSE,
FLAHERTY, DONALDSON & PRUNTY

By: 
Michael W. Dyer
Todd E. Reese
Attorneys for Respondent CVS #8789

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consuming drugs from the internet. The letter was sent to inform the Board that a pharmacy in Nevada might have been involved in the sale and dispensing of medications to the deceased patient. The complaint also detailed the death of the Illinois patient and was accompanied with a list of medications that were recovered from the decedent's residence.

III.

The list detailed the pharmacy name, pharmacy address, pharmacy phone number, prescribing physician, filling pharmacist's initials, date filled, and comments. All medications on the list were either carisoprodol 350mg. #180 or Tramadol 50mg. #180. The list identified Mountain View Pharmacy, located at 3150 North Tenaya Way, Suite 170 in Las Vegas, Nevada 89128 with the telephone number (866) 465-0791, as having filled three prescriptions for carisoprodol 350mg. #180 for the deceased patient. The list showed that the first prescription was filled by Mountain View on February 19, 2009 with the filling pharmacists initials of RK prescribed by Dr. Gloria C. Fong with the comment "different 1st name on script;" the second on April 10, 2009 with the filling pharmacists initials of RK prescribed by Dr. Charles Myers; and the third on March 26, 2009 with the pharmacists initials of RK prescribed by Dr. Jack Edward Pickering. Neither Dr. Fong, Dr. Myers, nor Dr. Pickering are physicians licensed in Nevada.

IV.

Morgan County Coroner, Jeff Lair, identified the deceased patient as 59-year-old Claudia Cannon from Chapin, Illinois. Ms. Cannon's date of death was May 15, 2009. Ms. Cannon's death was ruled as accidental caused by Acute Liver Failure, Toxic Liver Damage and Chronic Ultracet (Tramadol) Abuse.

V.

Special Agent John Buma from the F.B.I. Springfield, Illinois office confirmed that a large number of prescription medication bottles were recovered from Claudia Cannon's residence and impounded by his office. Special Agent Buma confirmed that over 7,000 dosage units of carisoprodol 350 mg tablets or Tramadol 50mg tablets from prescriptions obtained through the internet from about seven different states were impounded. Special Agent Buma stated that three bottles of medications from Mountain View had been impounded on scene.

VI.

Warren Rolan, the Owner/Pharmacy Manager for Mountain View was contacted and identified four prescriptions that he filled for Claudia Cannon:

1. Order #85713 carisoprodol 350mg. #180 dated 2/19/09
2. Order #99817 Tramadol 50mg. #180 dated 3/13/09
3. Order #99808 Soma 350mg. #180 dated 3/36/09
4. Order #118102 Soma 350mg. #180 dated 4/10/09

VII.

On June 5, 2008, Warren Rolan received a fax from PHARMAKIND, a subsidiary of Alliance Health Group promoting an internet pharmacy business. Warren Rolan stated that he never signed up for the business but that prescriptions were sent to him online after the patient filled out an online questionnaire. Warren Rolan stated that the prescriptions were usually for carisoprodol (a CIV controlled substance) and Tramadol (a dangerous drug). The prescriptions had the physician's name, address, telephone number, license number and DEA number listed. Warren Rolan at first contacted some of the physicians telephonically to verify the authenticity of the prescriptions, but later

ceased this activity and filled the prescriptions without contacting the physicians.

Warren Rolen stated that he would accept or reject the prescriptions and on the prescriptions that he would accept to fill later in the day, he would print labels, patient profiles, prescriptions and mailing labels at Mountain View. The prescriptions would then be filled and mailed using DHL initially and then later on Federal Express as the shipper. Warren Rolen kept the records for his internet business in boxes in a storage room inside the pharmacy in no chronological order. Additionally, the patient profiles for the internet pharmacy were only retrievable through the internet computer and only by specific prescription. Warren Rolen's internet prescription business and computer system was separate from Warren Rolen's Mountain View computer system. Warren Rolen never reported the filling of any internet pharmacy prescription to the Nevada Controlled Substance Task Force.

VIII.

Warren Rolen had the original downloaded prescriptions for three of the four prescriptions that he filled for Claudia Cannon via PHARMAKIND. The missing prescription, Order #118102 was for Soma, but there was a Federal Express delivery confirmation notice for the prescription that confirmed it had been sent to Claudia Cannon. Warren Rolen admitted that he had filled over 5000 prescriptions under the internet service PHARMAKIND and did not verify the authenticity of any doctor/patient relationship for any of Claudia Cannon's prescriptions.

IX.

Mountain View was not registered as an internet pharmacy and was not licensed in any other state as an out-of-state or internet pharmacy.

X.

Warren Rolan voluntarily submitted his Wells Fargo bank account records which show 42 deposits totaling \$117,000.00 from PHARMAKIND, from June 6, 2008 through May 21, 2009.

FIRST CAUSE OF ACTION

XI.

For acting as an internet pharmacy without appropriate licensure and or certification, Respondents Warren Rolan and Mountain View have violated NRS 453.3618 and/or NRS 453.3638(1) and/or NRS 639.210(4) and/or NRS 639.23288(1)(a) and/or NAC 639.426(1) and/or NAC 639.945(1)(k).

SECOND CAUSE OF ACTION

XII.

For failing to establish that a bona fide relationship existed between the Claudia Cannon and the doctors who wrote her prescriptions by confirming that a physical examination had occurred within the last six months before the prescription was written, Respondent Warren Rolan violated NRS 639.235 and/or 639.210(4) and/or NAC 639.945(1)(i).

THIRD CAUSE OF ACTION

XIII.

For failing to maintain prescription records in chronological order, Respondent Warren Rolan violated NRS 639.210(4) and/or NAC 639.706(1),(2) and (3) and/or NAC 639.945(1)(i).

FOURTH CAUSE OF ACTION

XIV.

For failing to report to the Nevada Controlled Substance Task Force the controlled substance prescriptions for Claudia Cannon and all of the other prescriptions filled for PHARMAKIND that were controlled substances, Respondents Warren Rolen and Mountain View have violated NRS 639.210(4) and/or NAC 639.926(1) and/or NAC 639.945(1)(i).

FIFTH CAUSE OF ACTION

XV.

For failing to provide a toll-free telephone number to provide telephonic counseling for patients being served out-of-state, Respondents Warren Rolen and Mountain View have violated NRS 639.210(4) and/or NAC 639.708(4)(a) and/or NAC 639.945(1)(i).

SIXTH CAUSE OF ACTION

XVI.

For failing to provide written patient information as provided for in NAC 639.707(1) and (2) and failing to review patient records regarding overutilization of the drug and drug abuse which contributed to the death of Claudia Cannon, Respondent Warren Rolen, violated NRS 639.210(4) and/or NAC 639.707(3) and (4) and/or NAC 639.945(1)(i).

SEVENTH CAUSE OF ACTION

XVI.

In participating in a course of action intended to assist in the fraudulent and deceitful purchasing of medications, including controlled substances, via the

internet with knowledge that, or under circumstances that Respondents Warren Rolan and Mountain View should have reasonably known that the sale of the medications were unlawful, questionable, or illegal, Respondents Warren Rolan and Mountain View violated NRS 639.210(4) and/or (12) and NAC 639.945(1)(h), and (i). Pursuant to NAC 639.955(7), all four orders that were filled and sent to Claudia Cannon by Respondents are grouped in this cause of action for the Board's administrative convenience, but the Board may impose separate discipline for each of the four orders.

WHEREFORE it is requested that the Nevada State Board of Pharmacy take appropriate disciplinary action with respect to the certificates of registration of the Respondents.

Signed this 10th day of December, 2009.


Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements regarding your certificate of registration. To do so, you must mail to the Board within 15 days of your receipt of this Notice of Intended Action and Accusation a written statement showing your compliance.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

v.

**Petitioner, STATEMENT TO THE RESPONDENT
NOTICE OF INTENDED ACTION
AND ACCUSATION
RIGHT TO HEARING**

**WARREN C. ROLAN, RPH
Certificate of Registration No. 15406**

Case No. 09-040-RPH-S

Respondent.

_____ /

TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

I.

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B, a Notice of Intended Action and Accusation has been filed with the board by the Petitioner, Larry L. Pinson, Executive Secretary for the board, alleging grounds for imposition of disciplinary action by the board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

II.

You have the right to a hearing before the Nevada State Board of Pharmacy to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. It is required that you complete two copies of the Answer and Notice of Defense documents served herewith and file said copies with the Nevada State Board of Pharmacy within fifteen (15) days of receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within.


III.

The Board has reserved Wednesday, January 14, 2010 as the date for a hearing on this matter at the Las Vegas Chamber of Commerce, 6671 Las Vegas Boulevard South, Las Vegas, Nevada. The hour of the hearing will be set by letter to follow.

IV.

Failure to complete and file your Notice of Defense with the board and thereby request a hearing within the time allowed shall constitute a waiver of your right to a hearing in this matter and give cause for the entering of your default to the Notice of Intended Action and Accusation filed herein, unless the board, in its sole discretion, elects to grant or hold a hearing nonetheless.

DATED this 10th day of December, 2009.


Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

ORIGINAL

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

v.

Petitioner,

**ANSWER AND NOTICE
OF DEFENSE**

WARREN C. ROLAN, RPH

Certificate of Registration No. 15406

Case No. 09-040-RPH-S

Respondent.

_____/

Respondent above named, in answer to the Notice of Intended Action and Accusation filed in the above-entitled matter before the Nevada State Board of Pharmacy, declares:

1. That his objection to the Notice of Intended Action and Accusation as being incomplete or failing to state clearly the charges against him, is hereby interposed on the following grounds: (State specific objections or insert "none").

"See Attached"

2. That, in answer to the Notice of Intended Action and Accusation, he admits, denies and alleges as follows:

"See Attached"

I hereby declare, under penalty of perjury, that the foregoing Answer and Notice of Defense, and all facts therein stated, are true and correct to the best of my knowledge.

DATED this _____ day of _____, 2009.

Warren C. Rolen

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

Case No. 09-040-RPH-S

Case No. 09-040-PH-S

v.

**WARREN C. ROLEN, R.Ph.,
Certificate of Registration No: #15406**

**MOUNTAIN VIEW PHARMACY,
Certificate of Registration No. PH01993**

Respondents.

**JOINT ANSWER, NOTICE OF DEFENSE, REQUEST FOR HEARING, DEMAND FOR
DISCOVERY, OBJECTION TO TESTIMONY BY WAY OF DECLARATION,
AFFIDAVIT OR REPORT/REQUEST FOR HEARING**

Comes Now, Respondents Warren C. Rolen, R.Ph., and Mountain View Pharmacy, by and through their undersigned counsel of record, Richard A. Schonfeld, Esq., of the law offices of Chesnoff & Schonfeld, and John V. Spilotro, Esq., and in Answer to the Notice of Intended Action and Accusation filed in the above entitled matter before the Nevada State Board of Pharmacy, declare and Answer as follows:

1. Answering Paragraph I of The Notice of Intended Action and Accusation, the Respondents are without sufficient information with which to form a basis as to the truth of the matters asserted and therefore deny said allegations in their entirety;

2. Answering Paragraph II of The Notice of Intended Action and Accusation, the Respondents are without sufficient information with which to form a basis as to the truth of the matters asserted and therefore deny said allegations in their entirety;

1
2 3. Answering Paragraph III of The Notice of Intended Action and Accusation, the
3 Respondents are without sufficient information with which to form a basis as to the truth of the
4 matters asserted and therefore deny said allegations in their entirety;

5 4. Answering Paragraph IV of The Notice of Intended Action and Accusation, the
6 Respondents are without sufficient information with which to form a basis as to the truth of the
7 matters asserted and therefore deny said allegations in their entirety;

8 5. Answering Paragraph V of The Notice of Intended Action and Accusation, the
9 Respondents are without sufficient information with which to form a basis as to the truth of the
10 matters asserted and therefore deny said allegations in their entirety;

11 6. Answering Paragraph VI of The Notice of Intended Action and Accusation, the
12 Respondents deny the allegations set forth;

13 7. Answering Paragraph VII of The Notice of Intended Action and Accusation, the
14 Respondents deny the allegations set forth;

15 8. Answering Paragraph VIII of The Notice of Intended Action and Accusation, the
16 Respondents deny the allegations set forth;

17 9. Answering Paragraph IX of The Notice of Intended Action and Accusation, the
18 Respondents are without sufficient information with which to form a basis as to the truth of the
19 matters asserted and therefore deny said allegations in their entirety;

20 10. Answering Paragraph X of The Notice of Intended Action and Accusation, the
21 Respondents are without sufficient information with which to form a basis as to the truth of the
22 matters asserted and therefore deny said allegations in their entirety;

23 11. Answering Paragraph XI of The Notice of Intended Action and Accusation, the
24 Respondents deny the allegations set forth;

1
2 12. Answering Paragraph XII of Plaintiff's Complaint, the Respondents deny the
3 allegations set forth;

4 13. Answering Paragraph XIII of The Notice of Intended Action and Accusation, the
5 Respondents deny the allegations set forth;

6 14. Answering Paragraph XIV of The Notice of Intended Action and Accusation, the
7 Respondents deny the allegations set forth;

8 15. Answering Paragraph XV of The Notice of Intended Action and Accusation, the
9 Respondents deny the allegations set forth;

10 16. Answering Paragraph XVI of The Notice of Intended Action and Accusation, the
11 Respondents deny the allegations set forth;

12
13 **DEMAND FOR DISCOVERY**
14

15 Respondents hereby demands discovery pursuant to NRS 622A.330 including
16 all documents and other evidence intended to be presented by the prosecutor in support of the case
17 and a list of proposed witnesses.
18

19 Request for discovery is also made pursuant to NRS 639.2485.
20

21 **OBJECTION TO USE OF AFFIDAVITS, DECLARATIONS, OR REPORTS AS**
22 **EVIDENCE**

23 The Board is hereby placed on notice that Respondents objects to the use of Affidavits,
24 Declarations or Reports, as substantive evidence or as testimony in this manner under Crawford v.
25 Washington, City v. Walsh, the Confrontation Clause of the United States Constitution and Nevada
26 Constitution, as well as all other applicable statutes.
27

28 Objection is also made under NRS 639.248.

1
2 **DEFENSES**

3 **FIRST DEFENSE**

4 The Complaint herein fails to state a claim against Respondents upon which relief can be
5 granted.

6 **SECOND DEFENSE**

7
8 The Board is estopped from pursuing any claim against Respondents.

9 **THIRD DEFENSE**

10
11 The Board is barred by the doctrine of waiver.

12 **FOURTH DEFENSE**

13 Any claim of the Board is barred by the laches of the Board in pursuing such claim.
14

15 **FIFTH DEFENSE**

16 The Respondents committed no wrongdoing during the time frame in question and this
17 action should therefore be dismissed.

18 **SIXTH DEFENSE**

19
20 The allegations against Respondents are vague and ambiguous and do not adequately
21 provide the Respondents with notice and an opportunity to defend themselves.
22

23 **SEVENTH DEFENSE**

24 The evidence obtained in this investigation was obtained in violation of the Respondents'
25 constitutional rights.
26
27
28

EIGHTH DEFENSE

Pursuant to NRCP 11, as amended, all possible defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Respondents' Answer, and therefore Respondents reserve the right to amend this Answer to allege additional defenses if subsequent investigation warrants.

NINTH AFFIRMATIVE DEFENSE

Defendant incorporates herein by reference all defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. These defenses are incorporated by reference for the specific purpose of not waiving them.

REQUEST FOR HEARING

The Respondents hereby request a full hearing on the allegations that have been lodged against them.

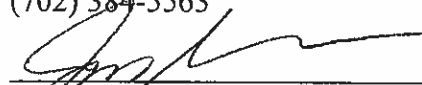
DATED this 28th day of December, 2009.

Under Penalty of Perjury the undersigned does hereby affirm that they are counsel of record for the Respondents in these matters, and that this document constitutes the Respondents' Notice of Defense for purposes of NRS 639.244.

RESPECTFULLY SUBMITTED:



RICHARD A. SCHONFELD, ESQ.
Nevada Bar No. 6815
520 South Fourth Street
Las Vegas, Nevada 89101
(702) 384-5563



JOHN V. SPILOTRO, ESQ.
Nevada Bar No. 4134
626 South Sixth Street
Las Vegas, Nevada 89101

NEVADA STATE BOARD OF PHARMACY,

NOTICE OF INTENDED ACTION
AND ACCUSATION

Case No. 09-040-RPH-S

Case No. 09-040-PH-S

COMES NOW Larry L. Pinson, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, and makes the following that will serve as both a notice of intended action under Nevada Revised Statutes (NRS) 233B.127(3) and as an accusation under NRS 639.241.

The Nevada State Board of Pharmacy has jurisdiction over this matter because Respondent Warren C. Rolen is a pharmacist licensed by the Board and Respondent Mountain View Pharmacy (Mountain View) is a pharmacy licensed by the Board located at 3150 North Tenaya Way #170, Las Vegas, Nevada.

On May 26, 2009, the Board received a letter and supporting documentation from Yashwant Amin, RPh, PhD., Director of Drug Compliance for the Illinois Department of Financial and Professional Regulation notifying the Board that a patient had died at Passavant Area Hospital in Jacksonville, Illinois after purchasing and

consuming drugs from the internet. The letter was sent to inform the Board that a pharmacy in Nevada might have been involved in the sale and dispensing of medications to the deceased patient. The complaint also detailed the death of the Illinois patient and was accompanied with a list of medications that were recovered from the decedent's residence.

III.

The list detailed the pharmacy name, pharmacy address, pharmacy phone number, prescribing physician, filling pharmacist's initials, date filled, and comments. All medications on the list were either carisoprodol 350mg. #180 or Tramadol 50mg. #180. The list identified Mountain View Pharmacy, located at 3150 North Tenaya Way, Suite 170 in Las Vegas, Nevada 89128 with the telephone number (866) 465-0791, as having filled three prescriptions for carisoprodol 350mg. #180 for the deceased patient. The list showed that the first prescription was filled by Mountain View on February 19, 2009 with the filling pharmacists initials of RK prescribed by Dr. Gloria C. Fong with the comment "different 1st name on script;" the second on April 10, 2009 with the filling pharmacists initials of RK prescribed by Dr. Charles Myers; and the third on March 26, 2009 with the pharmacists initials of RK prescribed by Dr. Jack Edward Pickering. Neither Dr. Fong, Dr. Myers, nor Dr. Pickering are physicians licensed in Nevada.

IV.

Morgan County Coroner, Jeff Lair, identified the deceased patient as 59-year-old Claudia Cannon from Chapin, Illinois. Ms. Cannon's date of death was May 15, 2009. Ms. Cannon's death was ruled as accidental caused by Acute Liver Failure, Toxic Liver Damage and Chronic Ultracet (Tramadol) Abuse.

V.

Special Agent John Buma from the F.B.I. Springfield, Illinois office confirmed that a large number of prescription medication bottles were recovered from Claudia Cannon's residence and impounded by his office. Special Agent Buma confirmed that over 7,000 dosage units of carisoprodol 350 mg tablets or Tramadol 50mg tablets from prescriptions obtained through the internet from about seven different states were impounded. Special Agent Buma stated that three bottles of medications from Mountain View had been impounded on scene.

VI.

Warren Rolan, the Owner/Pharmacy Manager for Mountain View was contacted and identified four prescriptions that he filled for Claudia Cannon:

1. Order #85713 carisoprodol 350mg. #180 dated 2/19/09
2. Order #99817 Tramadol 50mg. #180 dated 3/13/09
3. Order #99808 Soma 350mg. #180 dated 3/36/09
4. Order #118102 Soma 350mg. #180 dated 4/10/09

VII.

On June 5, 2008, Warren Rolan received a fax from PHARMAKIND, a subsidiary of Alliance Health Group promoting an internet pharmacy business. Warren Rolan stated that he never signed up for the business but that prescriptions were sent to him online after the patient filled out an online questionnaire. Warren Rolan stated that the prescriptions were usually for carisoprodol (a CIV controlled substance) and Tramadol (a dangerous drug). The prescriptions had the physician's name, address, telephone number, license number and DEA number listed. Warren Rolan at first contacted some of the physicians telephonically to verify the authenticity of the prescriptions, but later

ceased this activity and filled the prescriptions without contacting the physicians. Warren Rolen stated that he would accept or reject the prescriptions and on the prescriptions that he would accept to fill later in the day, he would print labels, patient profiles, prescriptions and mailing labels at Mountain View. The prescriptions would then be filled and mailed using DHL initially and then later on Federal Express as the shipper. Warren Rolen kept the records for his internet business in boxes in a storage room inside the pharmacy in no chronological order. Additionally, the patient profiles for the internet pharmacy were only retrievable through the internet computer and only by specific prescription. Warren Rolen's internet prescription business and computer system was separate from Warren Rolen's Mountain View computer system. Warren Rolen never reported the filling of any internet pharmacy prescription to the Nevada Controlled Substance Task Force.

VIII.

Warren Rolen had the original downloaded prescriptions for three of the four prescriptions that he filled for Claudia Cannon via PHARMAKIND. The missing prescription, Order #118102 was for Soma, but there was a Federal Express delivery confirmation notice for the prescription that confirmed it had been sent to Claudia Cannon. Warren Rolen admitted that he had filled over 5000 prescriptions under the internet service PHARMAKIND and did not verify the authenticity of any doctor/patient relationship for any of Claudia Cannon's prescriptions.

IX.

Mountain View was not registered as an internet pharmacy and was not licensed in any other state as an out-of-state or internet pharmacy.

X.

Warren Rolan voluntarily submitted his Wells Fargo bank account records which show 42 deposits totaling \$117,000.00 from PHARMAKIND, from June 6, 2008 through May 21, 2009.

FIRST CAUSE OF ACTION

XI.

For acting as an internet pharmacy without appropriate licensure and or certification, Respondents Warren Rolan and Mountain View have violated NRS 453.3618 and/or NRS 453.3638(1) and/or NRS 639.210(4) and/or NRS 639.23288(1)(a) and/or NAC 639.426(1) and/or NAC 639.945(1)(k).

SECOND CAUSE OF ACTION

XII.

For failing to establish that a bona fide relationship existed between the Claudia Cannon and the doctors who wrote her prescriptions by confirming that a physical examination had occurred within the last six months before the prescription was written, Respondent Warren Rolan violated NRS 639.235 and/or 639.210(4) and/or NAC 639.945(1)(i).

THIRD CAUSE OF ACTION

XIII.

For failing to maintain prescription records in chronological order, Respondent Warren Rolan violated NRS 639.210(4) and/or NAC 639.706(1),(2) and (3) and/or NAC 639.945(1)(i).

FOURTH CAUSE OF ACTION

XIV.

For failing to report to the Nevada Controlled Substance Task Force the controlled substance prescriptions for Claudia Cannon and all of the other prescriptions filled for PHARMAKIND that were controlled substances, Respondents Warren Rolen and Mountain View have violated NRS 639.210(4) and/or NAC 639.926(1) and/or NAC 639.945(1)(i).

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XV.

For failing to provide a toll-free telephone number to provide telephonic counseling for patients being served out-of-state, Respondents Warren Rolen and Mountain View have violated NRS 639.210(4) and/or NAC 639.708(4)(a) and/or NAC 639.945(1)(i).

SIXTH CAUSE OF ACTION

XVI.

For failing to provide written patient information as provided for in NAC 639.707(1) and (2) and failing to review patient records regarding overutilization of the drug and drug abuse which contributed to the death of Claudia Cannon, Respondent Warren Rolen, violated NRS 639.210(4) and/or NAC 639.707(3) and (4) and/or NAC 639.945(1)(i).

SEVENTH CAUSE OF ACTION

XVI.

In participating in a course of action intended to assist in the fraudulent and deceitful purchasing of medications, including controlled substances, via the

internet with knowledge that, or under circumstances that Respondents Warren Rolan and Mountain View should have reasonably known that the sale of the medications were unlawful, questionable, or illegal, Respondents Warren Rolan and Mountain View violated NRS 639.210(4) and/or (12) and NAC 639.945(1)(h), and (i). Pursuant to NAC 639.955(7), all four orders that were filled and sent to Claudia Cannon by Respondents are grouped in this cause of action for the Board's administrative convenience, but the Board may impose separate discipline for each of the four orders.

WHEREFORE it is requested that the Nevada State Board of Pharmacy take appropriate disciplinary action with respect to the certificates of registration of the Respondents.

Signed this 10th day of December, 2009.


Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements regarding your certificate of registration. To do so, you must mail to the Board within 15 days of your receipt of this Notice of Intended Action and Accusation a written statement showing your compliance.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

v.

**Petitioner, STATEMENT TO THE RESPONDENT
NOTICE OF INTENDED ACTION
AND ACCUSATION
RIGHT TO HEARING**

**MOUNTAIN VIEW PHARMACY
Certificate of Registration No. PH01993**

Case No. 09-040-PH-S

Respondent.

_____/

TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

I.

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B, a Notice of Intended Action and Accusation has been filed with the board by the Petitioner, Larry L. Pinson, Executive Secretary for the board, alleging grounds for imposition of disciplinary action by the board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

II.

You have the right to a hearing before the Nevada State Board of Pharmacy to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. It is required that you complete two copies of the Answer and Notice of Defense documents served herewith and file said copies with the Nevada State Board of Pharmacy within fifteen (15) days of receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within.

III.

The Board has reserved Wednesday, January 14, 2010 as the date for a hearing on this matter at the Las Vegas Chamber of Commerce, 6671 Las Vegas Boulevard South, Las Vegas, Nevada. The hour of the hearing will be set by letter to follow.

IV.

Failure to complete and file your Notice of Defense with the board and thereby request a hearing within the time allowed shall constitute a waiver of your right to a hearing in this matter and give cause for the entering of your default to the Notice of Intended Action and Accusation filed herein, unless the board, in its sole discretion, elects to grant or hold a hearing nonetheless.

DATED this 10th day of December, 2009.



Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

**CORRECTED
STATEMENT TO THE RESPONDENT
NOTICE OF INTENDED ACTION
AND ACCUSATION
RIGHT TO HEARING**

**MOUNTAIN VIEW PHARMACY
Certificate of Registration No. PH01993**

Case No. 09-040-PH-S

Respondent.

_____ /

TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

I.

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B, a Notice of Intended Action and Accusation has been filed with the board by the Petitioner, Larry L. Pinson, Executive Secretary for the board, alleging grounds for imposition of disciplinary action by the board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

II.

You have the right to a hearing before the Nevada State Board of Pharmacy to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. It is required that you complete two copies of the Answer and Notice of Defense documents served herewith and file said copies with the Nevada State Board of Pharmacy within fifteen (15) days of receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within.

III.

The Board has reserved Wednesday, January 13, 2010 as the date for a hearing on this matter at the Las Vegas Chamber of Commerce, 6671 Las Vegas Boulevard South, Las Vegas, Nevada. The hour of the hearing will be set by letter to follow.

IV.

Failure to complete and file your Notice of Defense with the board and thereby request a hearing within the time allowed shall constitute a waiver of your right to a hearing in this matter and give cause for the entering of your default to the Notice of Intended Action and Accusation filed herein, unless the board, in its sole discretion, elects to grant or hold a hearing nonetheless.

DATED this 30th day of December, 2009.


Larry L. Pinson, Executive Secretary
Nevada State Board of Pharmacy

ORIGINAL

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

ANSWER AND NOTICE
OF DEFENSE

MOUNTAIN VIEW PHARMACY
Certificate of Registration No. PH01993

Case No. 09-040-PH-S

Respondent.

Respondent above named, in answer to the Notice of Intended Action and Accusation filed in the above-entitled matter before the Nevada State Board of Pharmacy, declares:

1. That his objection to the Notice of Intended Action and Accusation as being incomplete or failing to state clearly the charges against him, is hereby interposed on the following grounds: (State specific objections or insert "none").

"See Attached"

2. That, in answer to the Notice of Intended Action and Accusation, he admits, denies and alleges as follows:

"See Attached".

I hereby declare, under penalty of perjury, that the foregoing Answer and Notice of Defense, and all facts therein stated, are true and correct to the best of my knowledge.

DATED this _____ day of _____, 2009.

type or print name

For Mountain View Pharmacy

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

Case No. 09-040-RPH-S

Case No. 09-040-PH-S

v.

**WARREN C. ROLAN, R.Ph.,
Certificate of Registration No: #15406**

**MOUNTAIN VIEW PHARMACY,
Certificate of Registration No. PH01993**

Respondents.

**JOINT ANSWER, NOTICE OF DEFENSE, REQUEST FOR HEARING, DEMAND FOR
DISCOVERY, OBJECTION TO TESTIMONY BY WAY OF DECLARATION,
AFFIDAVIT OR REPORT/REQUEST FOR HEARING**

Comes Now, Respondents Warren C. Rolan, R.Ph., and Mountain View Pharmacy, by and through their undersigned counsel of record, Richard A. Schonfeld, Esq., of the law offices of Chesnoff & Schonfeld, and John V. Spilotro, Esq., and in Answer to the Notice of Intended Action and Accusation filed in the above entitled matter before the Nevada State Board of Pharmacy, declare and Answer as follows:

1. Answering Paragraph I of The Notice of Intended Action and Accusation, the Respondents are without sufficient information with which to form a basis as to the truth of the matters asserted and therefore deny said allegations in their entirety;

2. Answering Paragraph II of The Notice of Intended Action and Accusation, the Respondents are without sufficient information with which to form a basis as to the truth of the matters asserted and therefore deny said allegations in their entirety;

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2 3. Answering Paragraph III of The Notice of Intended Action and Accusation, the
3 Respondents are without sufficient information with which to form a basis as to the truth of the
4 matters asserted and therefore deny said allegations in their entirety;

5 4. Answering Paragraph IV of The Notice of Intended Action and Accusation, the
6 Respondents are without sufficient information with which to form a basis as to the truth of the
7 matters asserted and therefore deny said allegations in their entirety;

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9 5. Answering Paragraph V of The Notice of Intended Action and Accusation, the
10 Respondents are without sufficient information with which to form a basis as to the truth of the
11 matters asserted and therefore deny said allegations in their entirety;

12 6. Answering Paragraph VI of The Notice of Intended Action and Accusation, the
13 Respondents deny the allegations set forth;

14 7. Answering Paragraph VII of The Notice of Intended Action and Accusation, the
15 Respondents deny the allegations set forth;

16 8. Answering Paragraph VIII of The Notice of Intended Action and Accusation, the
17 Respondents deny the allegations set forth;

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19 9. Answering Paragraph IX of The Notice of Intended Action and Accusation, the
20 Respondents are without sufficient information with which to form a basis as to the truth of the
21 matters asserted and therefore deny said allegations in their entirety;

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23 10. Answering Paragraph X of The Notice of Intended Action and Accusation, the
24 Respondents are without sufficient information with which to form a basis as to the truth of the
25 matters asserted and therefore deny said allegations in their entirety;

26 11. Answering Paragraph XI of The Notice of Intended Action and Accusation, the
27 Respondents deny the allegations set forth;
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12. Answering Paragraph XII of Plaintiff's Complaint, the Respondents deny the allegations set forth;

13. Answering Paragraph XIII of The Notice of Intended Action and Accusation, the Respondents deny the allegations set forth;

14. Answering Paragraph XIV of The Notice of Intended Action and Accusation, the Respondents deny the allegations set forth;

15. Answering Paragraph XV of The Notice of Intended Action and Accusation, the Respondents deny the allegations set forth;

16. Answering Paragraph XVI of The Notice of Intended Action and Accusation, the Respondents deny the allegations set forth;

DEMAND FOR DISCOVERY

Respondents hereby demands discovery pursuant to NRS 622A.330 including all documents and other evidence intended to be presented by the prosecutor in support of the case and a list of proposed witnesses.

Request for discovery is also made pursuant to NRS 639.2485.

OBJECTION TO USE OF AFFIDAVITS, DECLARATIONS, OR REPORTS AS EVIDENCE

The Board is hereby placed on notice that Respondents objects to the use of Affidavits, Declarations or Reports, as substantive evidence or as testimony in this manner under Crawford v. Washington, City v. Walsh, the Confrontation Clause of the United States Constitution and Nevada Constitution, as well as all other applicable statutes.

Objection is also made under NRS 639.248.

1
2 DEFENSES

3 FIRST DEFENSE

4 The Complaint herein fails to state a claim against Respondents upon which relief can be
5 granted.

6
7 SECOND DEFENSE

8 The Board is estopped from pursuing any claim against Respondents.

9 THIRD DEFENSE

10 The Board is barred by the doctrine of waiver.

11
12 FOURTH DEFENSE

13 Any claim of the Board is barred by the laches of the Board in pursuing such claim.

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15 FIFTH DEFENSE

16 The Respondents committed no wrongdoing during the time frame in question and this
17 action should therefore be dismissed.

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19 SIXTH DEFENSE

20 The allegations against Respondents are vague and ambiguous and do not adequately
21 provide the Respondents with notice and an opportunity to defend themselves.

22
23 SEVENTH DEFENSE

24 The evidence obtained in this investigation was obtained in violation of the Respondents'
25 constitutional rights.

EIGHTH DEFENSE

Pursuant to NRCP 11, as amended, all possible defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Respondents' Answer, and therefore Respondents reserve the right to amend this Answer to allege additional defenses if subsequent investigation warrants.

NINTH AFFIRMATIVE DEFENSE

Defendant incorporates herein by reference all defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. These defenses are incorporated by reference for the specific purpose of not waiving them.


REQUEST FOR HEARING

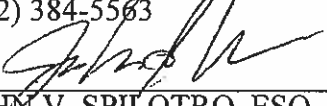
The Respondents hereby request a full hearing on the allegations that have been lodged against them.

DATED this 28th day of December, 2009.

Under Penalty of Perjury the undersigned does hereby affirm that they are counsel of record for the Respondents in these matters, and that this document constitutes the Respondents' Notice of Defense for purposes of NRS 639.244.

RESPECTFULLY SUBMITTED:


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